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Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

14 Cr. 68 (KBF)

5 ROSS WILLIAM ULBRICHT,

6 Defendant.

7 -----x

8 New York, N.Y.
9 February 2, 2015
9:10 a.m.

10 Before:

11 HON. KATHERINE B. FORREST,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA,

16 United States Attorney for the
Southern District of New York

17 BY: SERRIN A. TURNER

TIMOTHY HOWARD

18 Assistant United States Attorneys

19 JOSHUA LEWIS DRATEL

20 LINDSAY LEWIS

JOSHUA HOROWITZ

Attorneys for Defendant

21 - also present -

22 Special Agent Vincent D'Agostino

23 Molly Rosen, Government Paralegal

24 Nicholas Evert, Government Paralegal

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(In open court; jury not present)

THE DEPUTY CLERK: Continuation of the trial of United States of America v. Ross William Ulbricht. Counsel, state your names for the record.

MR. TURNER: Good morning. Serrin Turner for the government, along with Timothy Howard, Agent D'Agostino, Nicholas Evert and Molly Rosen.

THE COURT: Good morning all of you.

MR. DRATEL: Good morning. Joshua Dratel with Mr. Ulbricht standing beside me, Lindsay Lewis from my office and Joshua Horowitz.

THE COURT: Good morning. We have seven jurors here and have not heard from any that they will not be here. Several asked whether or not we were going to hold court today and we indicated yes, and they should just try to get in as soon as possible. We have not heard any specific time as to delay. So I am hopeful that they'll be in without too much delay.

There is one pending application before the Court which was a letter that I received from the government relating to Defense Exhibit E. Before we go to that, let me find out what the entire agenda is. Are there additional matters which need to be raised?

MR. DRATEL: Yes, your Honor. With respect to the Court's opinion yesterday precluding the two proposed defense

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1 experts, I would just object to the time frame in which we were
2 compelled to answer. I don't think it was reasonable or fair.
3 I think Mr. Ulbricht's Sixth Amendment right to counsel and in
4 turn his Fifth Amendment right to counsel -- I mean his Fifth
5 Amendment right to due process were denied by that. There was
6 no deadline set before the weekend. We had reached out to the
7 government to ask for a schedule. We did not hear back from
8 them. And in addition, there were -- we just did not get a
9 confirmation.

10 Ms. Lewis talked with the government about Sunday and
11 they were going to get back to us with a confirmation. They
12 agreed to Sunday. I guess Ms. Lewis -- we didn't get to the
13 Court the schedule. That was a miscommunication. I did not
14 have any opportunity to contribute to the Antonopoulos letter
15 and there are significant aspects of that issue that were not
16 addressed in that letter because we did not have access to
17 Mr. Antonopoulos during the period of time.

18 And we were able to speak to him yesterday after the
19 Court had already issued its order and he would have been able
20 to provide significant evidence rebutting material and
21 testimony by Mr. Yum from last Thursday for which we had
22 virtually no notice.

23 I just want to go through some of the issues that he
24 would have been able to address. One is that the impact of a
25 significant movement of bitcoin on the market, in other words,

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1 what the volatility, what the volume was in trading at certain
2 periods of time and what the movement of the amount of bitcoins
3 that Mr. Yum talked about and what that would have involved and
4 what the movement of certain amounts of bitcoin would have
5 involved on the market.

6 In fact, the FBI auction of the bitcoins that they
7 seized from the laptop of Mr. Ulbricht was the largest single
8 trade I think in the history of bitcoin, was the largest single
9 transaction at that point.

10 Also with respect to the keys that Mr. Yum testified
11 to about bitcoin keys on the wallet and on the laptop and
12 addresses, Mr. Antonopoulus would have been able to testify
13 that it does not indicate ownership, that there are three
14 aspects of this process: One is access, one is control and one
15 is ownership. Access, which is all having the key suggests is
16 the weakest form of ownership or control. It doesn't have
17 either. And then control is weaker and then there's ownership.

18 The keys on the laptop do not mean that someone owns
19 or controls the bitcoins. It also does not mean it's
20 exclusive. More than one person can have access through
21 possession of the keys. He analogized this concept to storage
22 lockers to having a pin number, where anyone with a pin number
23 with the storage locker could go to the storage locker, could
24 get access and also make deposits with a cash slot, that all
25 that would mean was access.

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1 Also with respect to the laptop, he would be able to
2 opine that Mr. Yum's testimony and analysis would not be
3 conclusive as to how these bitcoins got into the wallet on the
4 laptop. Who else could have had access? And not even know
5 that the keys that the person whose laptop it was might not
6 even know that the keys were there or that the bitcoins were
7 there, that there is knowledge of public addresses and people
8 can deposit and get returns. He has set up accounts where
9 people have put in money who he doesn't know. We had evidence
10 here about the FBI -- even when the FBI took the bitcoins, the
11 account continued to grow because people were putting money in.
12 And there's a whole range of reasons why that occurs in the
13 bitcoin market.

14 He also said that storing keys on a laptop is terrible
15 security. It is not recommended. You should never have it on
16 a laptop. It should never be on any computer connected to the
17 Internet. And he assumes that everything connected to the
18 Internet is compromised.

19 He also confirmed my cross-examination of Mr. Yum
20 which is that a cold wallet is one that has never been online
21 and is on a computer that's disabled to preclude Internet
22 access; that once a wallet has been online, it is a hot wallet,
23 which is something that Mr. Yum disputed me on and he was
24 wrong.

25 He would only use a hot wallet for a single

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1 transaction, which would be to withdraw bitcoins from a wallet.
2 He would never use it for any other purpose. He also talked
3 about the 700,000 number that the government had in Mr. Yum's
4 testimony and report, that there is a chance for a significant
5 double-counting because things can go from Silk Road to the
6 wallet back to Silk Road back to the wallet and these round
7 trips, which we establish have occurred in that -- in the time
8 that now we've had to do this and talk to Mr. Ant no louse about
9 it and others, that there's no indication that it's actually
10 700,000 bitcoins, that it could be many of the same bitcoins
11 going back and forth.

12 There are a number of explanations that he would have
13 had for that. One is that many merchants and customers on Silk
14 Road in his experience as an expert used Silk Road as a hot
15 wallet and as a result they have a running balance moving back
16 and forth from Silk Road to their own wallet from Silk Road to
17 their own wallet back and forth, deposits and withdrawals,
18 deposits and withdrawals. He said a lot of merchants do that.
19 And there's a lot of literature out there and posts and all of
20 that. He said there are legal traders on Silk Road who do that
21 often, people who trade T-shirts, coffee, key chains. He said,
22 in fact, when the government froze the wallets, a lot of
23 vendors with legitimate merchandise were out their money
24 because the bitcoins were seized.

25 He also pointed out that Silk Road is not a one-to-one

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1 type of bitcoin wallet in the sense that if you were to put a
2 bitcoin in the Silk Road wallet, you would not get that
3 wallet -- you would not get that bitcoin back when you
4 withdrew. It all goes to a single pot. Very much like cash at
5 a bank or an ATM, if you put in five 20s in a deposit and then
6 you withdraw, you don't get the same five 20s back. So that
7 could also account for these transactions, double-counting,
8 because you can't assume that it's not the same bitcoin going
9 back and forth and back and forth.

10 Also, Silk Road, according to his experience, was used
11 to trade currencies for bitcoin and as a primitive currency
12 exchange and that bitcoin speculators would use Silk Road in
13 and out as a means of speculation in bitcoin, and, of course,
14 that is what the defense theory is with respect to what
15 Mr. Ulbricht was doing at the time in terms of his business.

16 Also, he also said that in the early days because Silk
17 Road was a primary or the primary vehicle for using bitcoin in
18 commerce, that many ordinary bitcoin transactions or ordinary
19 bitcoin issues were treated on Silk Road where they weren't
20 available anywhere else, such as bitcoin mining and other
21 wallet issues and all of that as far as merchandise and people
22 using Silk Road in the context of bitcoin as a wallet and as a
23 means of exchange.

24 Also, he pointed out how bitcoins are traded in the
25 sense that -- not so much traded but how payment works for

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1 bitcoins and that bitcoins are -- and this has to do also with
2 bitcoin mining and what's called block reward meaning if you
3 mine bitcoin successfully, you get block reward. Let's say you
4 have 50.135 bitcoins would be a block award, so that goes to
5 the American who mined it. And if that person wanted to
6 purchase something for one bitcoin, they don't take one bitcoin
7 and pay; they have to pay with the entire block of bitcoin that
8 they received, the 50.135 bitcoin. So then you have to spend
9 all of it. And what that means is essentially not dissimilar
10 to, let's say, if I wanted to buy a pack of gum for a dollar
11 and all I had was a \$20 bill, I would have to use the 20 to pay
12 for the dollar.

13 The difference with the bitcoin situation is this:
14 When you get change from a bitcoin, in other words, if you pay
15 for a single bitcoin item with a 50-bitcoin piece, you're going
16 to get 49 bitcoins back in change. The difference in the cash
17 situation, and I'll try to analogize it further, which is that
18 the bitcoind wallet, which was used on Silk Road, that was the
19 system used on Silk Road, it automatically puts the change in a
20 new wallet. So that if I were to analogize it again to cash is
21 that if I were to pay for a pack of gum worth a dollar with a
22 \$20 bill, if I take the 20 from my right pocket, when I get the
23 change of \$19, I put it in my left pocket. It's a different
24 wallet because of this bitcoind program. That can also lead to
25 overcounting.

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1 And he pointed out that these blocks are indivisible,
2 they are of arbitrary size and there are algorithms for sorting
3 these bitcoin amounts for efficient means of payment. It's
4 something that Mr. Yum only touched on very, very generally
5 that is important in a more specific sense because it accounts
6 for the numbers of wallets, it accounts for the fractionalized
7 nature of the bitcoin that's in the wallets, and we believe
8 that that is relevant, that is important to our case. We did
9 not have sufficient notice to provide that before. Mr.
10 Antonopoulus was on a plane Saturday returning from overseas.
11 And the government knew he was away based on Ms. Lewis'
12 conversation with them. We had told the government that we
13 would be providing his opinions to them Sunday when he arrived
14 back in the United States. Let me just review my notes for one
15 moment.

16 So we're clear, I did not speak or otherwise
17 communicate with Ms. Lewis Saturday until later in the evening,
18 and based on the Court's ruling before we had a reasonable and
19 sufficient opportunity to respond, I move for mistrial or for
20 the remedy of giving us a chance to put Mr. Antonopoulus on the
21 stand.

22 THE COURT: Well, the application is denied for the
23 reasons substantially stated in my opinion. Still the Court
24 has no idea what Mr. Antonopoulus' qualifications are and
25 whether he is in fact qualified to present any of the opinions

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1 that you've suggested. The Court received simply a very bare
2 bones CV, a generic reference to 200 articles with none of the
3 articles listed or named. Many of the topics are those which
4 would have naturally arisen based upon the opening statements
5 of counsel and therefore should have been anticipated rendering
6 much of the Antonopoulus proposed testimony as information
7 which should have been anticipated, therefore disclosed,
8 therefore the methodology disclosed.

9 The particular aspects which are responsive to Yum I
10 think ignore the fact that Yum was responsive to your opening.
11 In fact, it was the minimum kind of exercise one would have
12 expected the government to have undertaken in response to that
13 opening. It would have been I think deficient for someone not
14 to have done that kind of exercise.

15 So for all of the reasons set forth in my opinion, the
16 preclusion order as to Mr. Antonopoulus remains.

17 Ms. Lewis.

18 MS. LEWIS: I wanted to add, obviously since
19 Mr. Antonopoulus was traveling, we also anticipated we would be
20 able to get a more complete sense of specifically what his
21 credentials were. I had an idea, but I wanted to confirm them
22 before putting them in a letter to the Court; and that was also
23 the purpose of speaking with him on Sunday. I had told the
24 government that we were intending to speak with him at 3:15
25 that day when he returned and that I would let them know as

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1 soon as we did have that conversation what his positions were
2 because, obviously, I would not want to misrepresent to them
3 something, have them agree to it, and then have it be something
4 else.

5 He was in Germany. He had almost limited to no access
6 to Wi-Fi, so we were not able to get these things before,
7 though we did endeavor to do so. We were in communication with
8 him. It's in the 3500 material. You can see we were
9 communicating with him to try to get this information and we
10 have this call set.

11 I did want to add, though, that he has been qualified
12 as an expert on bitcoin in Canadian court. Obviously this is
13 not an issue that has been in American courts practically at
14 all, but it has been there. He's also spoken, I believe, in
15 Europe as an expert on this topic. And he has also written a
16 leading book in this area, "Mastering Bitcoin," as well as a
17 host of articles on this topic. He's a security expert. All
18 of this would have been in a subsequent submission had I had
19 the opportunity to speak with him as planned on Sunday.

20 THE COURT: Well, I think bitcoin issues here have
21 been evident since this case was first charged, and the idea
22 that you would not have located or disclosed Mr. Antonopoulus
23 until when you did, let alone trying to get in touch with him
24 the day before he's supposed to go on the stand potentially is
25 a choice you folks made.

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1 Does the government want to add anything to the
2 record?

3 MR. HOWARD: To be clear on one thing: We did speak
4 with Ms. Lewis on Friday evening. It was requested whether or
5 not the government would agree to allow certain parts of
6 Mr. Antonopoulus' testimony in so they won't have to be
7 litigated. At that time we expressed we filed our motion to
8 preclude and we were in no position to evaluate any kind of
9 compromise given we had no idea what his opinion would be
10 because the notes were so deficient.

11 We were told by Ms. Lewis that we would not receive
12 any more detail before Sunday and we did confirm the fact that
13 our position was that Mr. Antonopoulus' testimony should be
14 excluded and it was up to them to oppose it if that was their
15 choice.

16 MS. LEWIS: That's correct.

17 MR. TURNER: Could I add one brief point: All of the
18 opinions that Mr. Dratel expressed, we would have objected to
19 as irrelevant and improper if we had had proper notice. So I
20 don't want the record to be left unclear that, in the
21 government's view, we would have accepted the relevancy prior
22 to his opinions.

23 THE COURT: That's the Antonopoulus issue. Is there
24 anything else before we get to Defendant's Exhibit E?

25 MR. DRATEL: Yes.

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1 THE COURT: All right.

2 MR. DRATEL: As the Court is aware, the government's
3 initial exhibit list and throughout the first half of the trial
4 included Andrew Jones, who has pleaded guilty to his
5 involvement in Silk Road as an administrator under the name of
6 inigo. At some point midway through the trial, the government
7 said they may not call him and then just last week conclusively
8 told us that they would not call him.

9 When it initially became -- when I was initially
10 informed that he would not be called by the government, I spoke
11 with Mr. Turner about a specific piece of *Brady* material that
12 the government provided. The government doesn't call it *Brady*
13 because they don't call anything *Brady*.

14 Mr. Turner in a telephone conversation with me and
15 Ms. Lewis said there is no *Brady* material in this case because
16 he believes the defendant is guilty, so that's his view of
17 *Brady*. So the notion that the government understands its *Brady*
18 obligations is not reliable in this case.

19 So I asked him if he would stipulate to the piece that
20 he knew we were interested in and he said yes, just a matter of
21 language. Then I asked him again when he said that -- when
22 they concluded they would not call Mr. Jones and he agreed
23 again to stipulate. And then over the weekend yesterday I gave
24 them the language of the stipulation which is only what is in
25 their letter with the exception of one sentence which was

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1 removed; it's only what's in their letter. And I got
2 back -- and then I spoke to Mr. Turner at 7:00 last night and
3 he at first resisted unless I met one of his conditions on
4 something completely unrelated that he would not stipulate
5 unless I made met a condition that was completely unrelated. I
6 agreed because this stipulation is that important to his
7 condition. And then at 11:00, he writes me an email saying
8 they're not stipulating.

9 THE COURT: Why don't you describe to me what the
10 substance of the issue is.

11 MR. DRATEL: Yes.

12 THE COURT: Because it sounds like the alternative
13 would be to call Mr. --

14 MR. DRATEL: Can't call him. He's going to take the
15 Fifth Amendment. I spoke to his lawyer. He's unavailable. So
16 I would move it, by the way, either as a statement against
17 penal interest, 807, defense witness immunity. I'd ask for all
18 those things. This is a case where if ever there was an
19 appropriate case for it, this is it.

20 So on December 29, 2014, we received a letter from the
21 government and on the second page of the letter it says that in
22 a recent witness interview, Andrew Jones a/k/a inigo said the
23 following, and this is the quote. This is not necessarily a
24 quote from Mr. Jones but this is the government's
25 characterization of what he said.

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1 THE COURT: It's a 302?

2 MR. DRATEL: No. It's not a 302, but this is a letter
3 from Mr. Turner, signed by Mr. Turner:

4 At some point in or about August or September 2013,
5 Jones tried to authenticate that the Silk Road user "Dread
6 Pirate Roberts" whom he was talking to at the time (via Pidgin
7 chat) was the same person with whom he had been communicating
8 in the past with this username. Previously in or about
9 October 2012, Jones and "Dread Pirate Roberts" had agreed upon
10 a "handshake" to use for authentication in which Jones would
11 provide a certain prompt and "Dread Pirate Roberts" would
12 provide a certain response. When during the 2013 chat in
13 question Jones provided what he believed to be the designated
14 prompt, "Dread Pirate Roberts" was unable to provide the
15 response Jones thought they had agreed on; however, later in
16 the chat, Jones asked "Dread Pirate Roberts" to validate
17 himself by specifying the first job that "Dread Pirate Roberts"
18 assigned to him (running the 'DPR book club') which "Dread
19 Pirate Roberts" was able to do.

20 And then that's the block quote, and then the last
21 paragraph is: The government is unaware of any extant record
22 of the 2013 chat described by Jones. There is a record of an
23 October 2012 chat between the defendant and Jones discussing a
24 "handshake" in the file labeled MBSOBZVKH WX4HMJT on the
25 defendant's computer, which has already been provided to the

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1 defense in discovery, and our stipulation would have included
2 that specific chat, which is very short -- I think it's one
3 page basically-- as part of the stipulation.

4 THE COURT: Mr. Turner, why has the government taken
5 the position it has on the stipulation?

6 MR. TURNER: First of all, your Honor, I just want to
7 be clear, I never said that we would stipulate. What I said is
8 that we would consider stipulating. And what happened was this
9 disclosure was made over a week and-a-half ago and the
10 defendant did not get proposed language to the government until
11 last night when the government was very, very busy with other
12 things. The language that the defendant proposed for one thing
13 omitted the very last sentence the defense counsel just read,
14 which is, in the government's view, clearly important because
15 the point is that inigo, Mr. Jones, tried a prompt that didn't
16 work but then he tried another prompt that did.

17 THE COURT: Then you could add that in. That would be
18 the product of a negotiation over the language of the
19 stipulation.

20 MR. TURNER: The problem that I had is that, like I
21 said, this came at the 11th hour.

22 THE COURT: Can you look at it this morning as we're
23 proceeding?

24 MR. TURNER: I can, although it's not my job to draft
25 appropriate language.

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1 THE COURT: No. Mr. Dratel, it sounds like, has done
2 that job. He's drafted language. Why don't you take a look at
3 it and see whether or not there are additions that you could
4 make to it or changes you could suggest that would then make it
5 acceptable to the government.

6 Only at that point when I've got the two of you having
7 truly joined issue do I want to have to then make a ruling. If
8 you folks are able to agree, then that's obviously the best
9 course.

10 Will you do that?

11 MR. TURNER: We will. To make it clear --

12 THE COURT: I understand you don't want to.

13 MR. TURNER: No, I just think just quoting what we put
14 in a letter does not provide necessarily sufficient context by
15 itself.

16 THE COURT: Go back and figure out what the context is
17 that's fair. You folks then negotiate over this. We still
18 have the government's witness on direct and I think Mr. Howard
19 said he's got an hour or two left with that. Then there's
20 cross. So you have some time while you're sitting there maybe
21 to take a look at this.

22 Mr. Dratel, do you have it in a form written or
23 otherwise that he could look at and fiddle with?

24 MR. DRATEL: I sent him the stip. I have it here.

25 THE COURT: In paper copy.

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1 MR. DRATEL: I can give it to him. I can give him my
2 copy. I know what it says. And so we're clear, Mr. Turner's
3 response to me last night was he couldn't consider alternative
4 language and it was too late to do so and he never made a plan
5 or proposal. The reason I took that sentence out -- so we know
6 where we're going, the reason I took that sentence out is
7 because they could have called him to get that. It's a
8 confrontation issue with respect to that. There is a
9 confrontation issue. If there's a completeness issue, that's a
10 different issue, but they never came back with a single
11 sentence that's not in there. Everything else is from the
12 government's letter. This has never been a mystery. We're
13 talking about preparation time. This has never been a mystery
14 as to what we want to do.

15 THE COURT: I hear your position. So I'm going to ask
16 the government to look at that and see if there are additions
17 or changes which would make it acceptable.

18 If the answer is after further considering the matter
19 there are not, then we will deal with it in that posture. But
20 if there are further changes or modifications that would make
21 it acceptable, I'd like to know that.

22 Are there any other matters, Mr. Dratel?

23 MR. DRATEL: I prepared some supplemental requests to
24 charge, they're very short, based on evidentiary issues. If I
25 have a representation from the government that this is the

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1 government's last witness, I'll be happy to share them now.

2 THE COURT: Is this the last --

3 MR. DRATEL: It's not going to result in something
4 coming into evidence that was not already --

5 THE COURT: Is Mr. Shaw the last witness?

6 MR. TURNER: Yes, your Honor.

7 THE COURT: Mr. Dratel, you can proceed.

8 MR. DRATEL: Thank you, your Honor. I'll give the
9 government a copy here and I'll hand one up to the Court.
10 First, one, that law enforcement officers cannot qualify as
11 coconspirators.

12 The second is that even if you conclude beyond a
13 reasonable doubt that Mr. Ulbricht was involved in the sale of
14 mushrooms on the Silk Road site or otherwise in 2011, that
15 alone would not be sufficient to establish his guilt -- it says
16 "guilty," a typo -- on Counts One, Two or Four or his
17 participation in any of the conspiracies charged in Counts
18 Three and Seven, and the reason for that is venue.

19 This is number three, the undercover purchases by
20 Homeland Security Investigations in Chicago and any seizures
21 made by Homeland Security Investigations in Chicago are not by
22 themselves sufficient to find Mr. Ulbricht guilty on any count,
23 again because of venue.

24 Number four, even if you find that Mr. Ulbricht
25 ordered fake identification documents, that is not evidence you

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1 can consider with respect to Count Six. One is venue and the
2 second is it's not what's charged. It's not charged
3 conspiracy, even if it is a conspiracy.

4 Supplemental defense instruction number five would be
5 in order to find Mr. Ulbricht guilty beyond a reasonable doubt,
6 there must be evidence beyond the uncorroborated admission of
7 the accused. It is necessary for the government to introduce
8 substantial independent evidence which would tend to establish
9 the trustworthiness of any such statement sufficient. It is
10 sufficient if the corroboration supports the essential facts
11 admitted sufficiently to justify an inference of their truth.
12 Any independent facts plus the other evidence besides the
13 admission must, of course, be sufficient to find guilt beyond a
14 reasonable doubt. And the reason for that last instruction is
15 rather arcane and archaic but still the viable principle of
16 *corpus delicti*, which is that the uncorroborated admission or
17 confession of an accused is not sufficient evidence and there
18 must be some independent corroboration.

19 In the context of what I assume the government will be
20 arguing with respect to journals is that Mr. Ulbricht
21 acknowledged his participation in the defense even as early as
22 2011, even if we don't contest some of that.

23 THE COURT: I see that you have some case cites here.
24 I'm going to have my clerks pull the cases. I'll hand this to
25 them. Let's take this up at the break or at the lunch and

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1 we'll see how we're progressing through the witness so that the
2 government can determine what its response is to any of the
3 particular requests.

4 MR. DRATEL: Okay. The only other charge, if
5 obviously this stipulation issue doesn't work out or that is
6 not admitted the Jones statement is not admitted in some form,
7 then I would ask for a missing witness charge because he is
8 completely within the government's control. He has pled guilty
9 months ago. The only reason he has a Fifth Amendment privilege
10 is because he has not been sentenced yet and it is completely
11 within the government's control pursuant to the provisions of
12 the cooperation agreement.

13 THE COURT: We'll have the government respond to that
14 when they respond to the stipulation. It may or may not be
15 necessary if the government and the defense are able to agree
16 on language in the stipulation.

17 Are there any other matters which we need to raise
18 before we go to Defense Exhibit E?

19 MR. TURNER: Your Honor, the government would like
20 clarification on what the witness list of the defense is at
21 this point, the experts have now been precluded. The defense
22 last week indicated they were having trouble arranging
23 arrangements for their character witnesses, so we'd like some
24 sense of where we're headed for the rest of the day and who we
25 need to prepare for.

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1 THE COURT: We'll have Ms. Lewis give us the list of
2 who you expect to call.

3 MS. LEWIS: The first witness will be Karen Steib
4 Arnold, she's a character witness; followed by Thomas Haney,
5 the same, also character witness; and then Daniel Davis, who is
6 also a character witness.

7 MR. DRATEL: We have one who could not make it today
8 because of travel. His plane was canceled.

9 MS. LEWIS: He's arriving this evening. There's also
10 another witness that could only arrive today and wasn't able to
11 get here earlier. Obviously, we thought we would have a number
12 of other witnesses here. And then we also have another
13 witness, Bridget Prince, who is on-hand, but we do hope to be
14 able to get these other people.

15 THE COURT: There's a possibility if some of the
16 others get here or if the testimony of Mr. Shaw goes long
17 enough that it would be tomorrow morning, it would be two or
18 three others?

19 MS. LEWIS: Yes, your Honor. That's correct.

20 THE COURT: Of a similar nature?

21 MS. LEWIS: There may actually be fact witnesses
22 instead -- one fact witness.

23 THE COURT: Who would that be?

24 MS. LEWIS: Alden Schiller and Chris Kincade.

25 THE COURT: And what's their timing?

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1 MS. LEWIS: They're both arriving by this evening and
2 I believe both will be fairly short witnesses and we'll be able
3 to go on first thing tomorrow if we need them to be here.

4 THE COURT: Let's see where we are today, but if
5 they're going to be available first thing in the morning and
6 they're fact witnesses, then tell them to continue to keep
7 their flight plans in place and to try to get here just as soon
8 as they can.

9 MS. LEWIS: We have. Obviously with the weather it's
10 possible things could be delayed further, but as far as I know,
11 they'll both be here tonight and are planning to come and
12 testify tomorrow.

13 MR. DRATEL: Mr. Schiller was actually supposed to
14 arrive yesterday. His flight was canceled.

15 THE COURT: The record should reflect --

16 MR. DRATEL: I'm sorry, that's not correct.

17 THE COURT: There have been about six- to eight inches
18 of snow overnight which now has turned to rain, which makes us
19 able to be here but has caused some difficulties with travel
20 I'm sure. It certainly has caused difficulties with folks
21 getting in just from Manhattan. That's that.

22 Is there anything else we need to raise before we go
23 to Defense Exhibit E?

24 MR. TURNER: No, your Honor.

25 MR. DRATEL: No, your Honor.

F22gulbl

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1 THE COURT: Mr. Dratel, do you want to respond to the
2 government's letter on Defense Exhibit E?

3 MR. DRATEL: The letter is filed under seal, your
4 Honor.

5 THE COURT: The issue I think can be described as
6 follows. It's I think number one, whether or not the purpose
7 of the document is for the truth and if it's not for the truth,
8 then what other purpose does it serve?

9 And then there's certainly an issue which we can talk
10 about in open court, in fact, I think we can talk about all of
11 it in open court, except for the one issue that has been under
12 seal throughout the entire case, but everything I think can be
13 referred to other than that. The second point, if it's not
14 offered for the truth, goes to the issue of the *Wade*, what I'll
15 call the *Wade* issue about other perpetrator evidence.

16 MR. DRATEL: It doesn't go for the truth in the sense
17 of the information in it; it goes for the truth the fact that
18 it was communicated to DPR, which is indisputable in that this
19 particular piece of evidence communicates to DPR the name and
20 profile of the person deathfromabove believes is DPR, and
21 that's what he says the information is.

22 Now, I don't know if I can go further or not go
23 further in open court, but the fact is, the government has
24 created a situation and now they want to profit from it by
25 precluding evidence and also saying that the other parts we

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1 redacted, we redacted because they won't let us use it. They
2 redacted. They took that part out of the case, so I don't
3 understand how they can possibly have it both ways.

4 THE COURT: Let's forget about the redactions for a
5 moment. Let's just focus on if the information between these
6 two declarants is offered for the truth, in other words, if you
7 want to offer it for the truth that Anand is the perpetrator --

8 MR. DRATEL: It's not offered for the truth. It's
9 offered for the fact that DPR was getting information about
10 people who were supposed to be DPR and that these things were
11 coming in. There's a whole law enforcement file that's part
12 and parcel of the whole thing. And one of these people is one
13 of the people who the agent was investigating.

14 I think it's a fair inference. I think it's a
15 completely fair inference for anyone to draw.

16 THE COURT: The first part that I want to take is just
17 sort of the hearsay part whether it's for the truth or not for
18 the truth. So if it's not for the truth, in other words, if
19 the defense doesn't intend to say Anand did it, the real DPR
20 was Anand -- if the defense is intending to say the real DPR
21 was Anand, then this is obviously for the truth.

22 MR. DRATEL: No.

23 THE COURT: Tell me whether or not you're planning on
24 making --

25 MR. DRATEL: It's not that; it's that if you're DPR

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1 and you get a name, a specific name, this Anand Athavale and a
2 profile and details, if it's Anand Athavale, if it is, and
3 you're put on notice that it's you, you're going to take steps,
4 so that's not saying that it's him.

5 THE COURT: That's used for the truth.

6 MR. DRATEL: No, it's not for the truth; it's the fact
7 that he was informed, it's the fact that DPR was informed.
8 That's indisputable. It's not for the truth of whether it is
9 or not. It's for an inference for the point is that if DPR is
10 informed that it's him, then he's going to take action. And
11 that's not for the truth of the matter of whether it is or not;
12 it's for the purpose of drawing an inference that anyone
13 who -- and also the fact that if DPR is getting information
14 from law enforcement about specific people, he knows the walls
15 are closing in, he's going to take action to implement an
16 escape plan. That is just a fair inference from all of that.

17 THE COURT: So the theory would be that Anand Athavale
18 understands by virtue of his exchange that investigative sites
19 are trained on him and he takes evasive actions in response
20 thereto.

21 MR. DRATEL: If it's him. And I'm not going to say
22 it's him. I'm going to say anyone in that situation and even
23 DPR even, if it's not Anand Athavale, DPR is very interested
24 and clued in as to what is going on in the law enforcement
25 community and he is actively security-conscious in a very

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1 substantial way and that's an inference that we're -- it's not
2 even an inference. It's a fact from this.

3 THE COURT: So what evidentiary basis is there that
4 there was another DPR? And what evidentiary basis is there
5 that the defendant ever handed off Silk Road and then took back
6 Silk Road as a setup that would then demonstrate the existence,
7 by inference at least, of an additional perpetrator?

8 MR. DRATEL: Well, the evidence that he gave it up is
9 that Richard Bates testified to that. The government's own
10 witness testified to that.

11 THE COURT: That he told that he had given it up?

12 MR. DRATEL: Yeah.

13 THE COURT: What is the evidentiary basis that there
14 was a handoff to anyone else?

15 MR. DRATEL: Well, that's a series of pieces of
16 evidence.

17 THE COURT: Such as?

18 MR. DRATEL: I don't want to sum up before they sum
19 up.

20 THE COURT: Under the *Wade* case and other case law for
21 the Court, as you know, the Court must undertake an analysis as
22 to whether or not other perpetrator evidence is going to result
23 in inviting jury speculation and there must be a substantial
24 connection between some other potential perpetrator and the
25 facts before the Court. You can't just throw up names and

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1 other possibilities. The courts have long said that that's an
2 inappropriate way to proceed. There's just lots of case law on
3 this point.

4 We're waiting for two more jurors.

5 MR. DRATEL: The government -- on Thursday, Agent Shaw
6 showed that there is a second administrative key, the SSH key,
7 that gives someone completely separate from even frosty,
8 assuming that that's Mr. Ulbricht, access to the server. I
9 believe that the Government Exhibit 130 and the thumb drive
10 also are --

11 THE COURT: The thumb drive found on his night table?

12 MR. DRATEL: Right.

13 THE COURT: Why would that possibly result in anything
14 other than incriminating him?

15 MR. DRATEL: Because why would it be on the thumb
16 drive if it's on a laptop? It's on a thumb drive because
17 that's what was given to him, and that's an inference that the
18 jury is entitled to draw.

19 THE COURT: That sounds like the difference between an
20 inference and speculation. Let me gather what you believe the
21 evidentiary basis is for another perpetrator. It's Bates that
22 he was told that Ulbricht had given up Silk Road, and it was
23 the second administration key, which is not tied to somebody
24 who was calling themselves -- well --

25 MR. DRATEL: There were changes in the site throughout

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Trial

1 that would indicate that there was a change. You have the
2 origin of DPR in general, the changes in October of 2011, the
3 changes in June of 2011, the changes in January 2012.

4 THE COURT: You need to come up with something that is
5 a handoff to another person by inference; otherwise --

6 MR. DRATEL: But Bates said he sold the site and that
7 it was no longer his problem as of 2013. The standard is not
8 that I have to prove it's someone else. The standard --

9 THE COURT: The standard is you have to show a
10 substantial connection that there is another perpetrator.

11 MR. DRATEL: No. I think I have to show a substantial
12 connection to this case, not to another perpetrator
13 specifically. That's a burden on the defense that doesn't
14 exist.

15 THE COURT: It's a substantial connection that that
16 other person is, in fact, the true perpetrator of the crimes
17 charged here.

18 MR. DRATEL: Well, that's what I was trying to get to
19 in my cross-examination of Agent Der-Yeghiayan. I would have
20 gotten to it also with other witnesses, but I was precluded
21 from cross-examining them on this.

22 THE COURT: For instance, is there evidence --

23 MR. DRATEL: The Jones handshake in September 2013,
24 August or September of 2013, the handshake evidence is critical
25 in this. It's not in yet, but it's critical. You talk about

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1 handoff at the end, that's an inference that we're entitled to
2 have.

3 THE COURT: Let me hear from the government.

4 MR. HOWARD: I believe the *Wade* case requires more of
5 a substantial connection between the actual alternative
6 perpetrator that they're trying to depict, not just someone
7 else generally. Here the issue is that to the limited
8 extent -- to the extent this has any probative value, it is if
9 exactly as if Mr. Athavale is the alternative perpetrator.
10 There is no evidence which substantially connects him to a
11 theory that he's an alternative perpetrator in this case for
12 the reason we set forth in the letter.

13 THE COURT: Defense Exhibit E is precluded on the
14 basis that it's hearsay. It is offered for the truth that
15 Anand is the DPR or that Anand is one of potential other DPRs,
16 which makes it for the truth, and I can't find any reason that
17 it would be offered other than for the truth.

18 The *Harwood* case, 998 F.2d 91 deals with a situation
19 where information which comes in that's irrelevant, unless it's
20 for the truth, is applicable as well as other cases. Let me
21 give you another one. There are legions of cases that are
22 supportive of keeping things out which are coming in for the
23 truth. And based upon everything I have heard, the use of this
24 would be for the truth. Therefore, it makes the statements as
25 between two out-of-court declarants, and you can't just have

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1 two out-of-court declarants, offered for the truth.

2 Also even if it wasn't offered for truth, you then get
3 into the secondary analysis of the *Wade* standard. The *Wade*
4 standard relies upon the *McVeigh* standard, and it says "In the
5 course of weighing probative value and adverse dangers, courts
6 must be sensitive to the special problems presented by
7 alternative perpetrator evidence. Although there is no doubt
8 that the defendant has a right to attempt to establish his
9 innocence by showing that someone else did the crime, a
10 defendant still must show that his proffer evidence on the
11 alleged alternative perpetrator is sufficient on its own or in
12 combination with other evidence in the record to show a nexus
13 between the crime charged and the asserted alternative
14 perpetrator. It is not sufficient for a defendant merely to
15 offer up unsupported speculation that another person may have
16 done the crime. Such speculative blaming intensifies the grave
17 risk of jury confusion and invites the jury to render its
18 findings based on emotion or prejudice." That's cited in the
19 *Wade* case, Second Circuit, binding on this Court, 333 F.3d 51,
20 pin cite at 61. So that issue is resolved.

21 How are we doing with the jurors? Still waiting on
22 two.

23 (Continued on next page)

24

25

F225ulb2

1 MR. DRATEL: And, your Honor, just since the entire
2 government's case is two declarants not in court, I would move
3 that the jury be instructed that nothing that came in in any
4 piece of evidence that the government put in except for perhaps
5 Bates' testimony, which is the only first-hand testimony in the
6 entire case, is not for the truth.

7 THE COURT: Now, Mr. Dratel you understand, and the
8 Court spent a great deal of time on this both in pretrial --
9 and in the initial evidentiary rulings -- that there is an
10 exception to the hearsay rules for co-conspirator testimony.
11 Co-conspirator testimony can come in a variety of forms
12 including web shots and other things. I went through that
13 extensively, did make the factual findings necessary to support
14 by a preponderance of the evidence the existence of the
15 necessary elements for a co-conspirator exception. There were
16 also a couple of other exceptions which applied here and there,
17 we have dealt with them all to the extent that they were
18 unique. So, those situations were independent and different.

19 All right. Let's take a break until we get the jury
20 assembled. We are close. We are close and so I would hope
21 that they would be out shortly.

22 Let's get Mr. Shaw back so he is not delayed in
23 getting on the stand.

24 (Recess)

25 THE COURT: We are waiting for one juror, juror no. 3.

F225ulb2

1 He has communicated with Joe, by text, indicating that he is
2 just getting on the no. 5 train, wherever that is occurring; he
3 said it will be about an hour. That was about seven minutes
4 ago -- five, seven minutes ago, and so I don't know, maybe it
5 will take less than that but I can't imagine that we are going
6 to be starting before 11:00. In light of the fact that he is
7 on his way and has shown up each day, I don't think we should
8 take any other action at this time. So, I wanted to give you
9 folks an update.

10 Anyone disagree and think we should proceed without
11 this juror?

12 MR. TURNER: No, your Honor.

13 MR. DRATEL: No, your Honor.

14 THE COURT: So, we will give you folks an update, but
15 plan an being back somewhere in the vicinity of 11:00, 11:05
16 and we will start then.

17 Thank you.

18 (Recess)

19 THE COURT: Let's bring out the jury.

20 (Continued on next page)

F225ulb2

1 (Jury present)

2 THE COURT: All right, ladies and gentlemen. Let's
3 all be seated.

4 Mr. Howard, you may continue, sir.

5 And Mr. Shaw, you are under oath from last week.

6 THE WITNESS: Okay.

7 BRIAN SHAW, resumed.

8 DIRECT EXAMINATION (Continued)

9 BY MR. HOWARD:

10 Q. Good morning, Mr. Shaw.

11 A. Good morning.

12 Q. Mr. Evert, can you please publish Government Exhibit 936,
13 please? If we can go to where we left off on page 18, please?

14 Now, Mr. Shaw, you testified on last Thursday that
15 this was a compilation of private messages that were sent to
16 and from the Dread Pirate Roberts, correct?

17 A. That's correct; with one exception.

18 Q. And that exception being the one post from the Silk Road
19 forum, correct?

20 A. Correct.

21 Q. And that the other side of the party in each message is the
22 Dread Pirate Roberts other than the forum post, correct?

23 A. That's correct.

24 Q. Mr. Evert, can we zoom in on the post in blue there?

25 March 28, 2013, from redandwhite to Dread Pirate

F225ulb2

Shaw - direct

1 Roberts:

2 "I already have that information but thank you. 1M a
3 week sounds like it would be worth selling on here, once we
4 know exactly how everything works. Even if commission was 15%
5 it would not matter, as we lose more than 15% doing it on the
6 streets with street level guys getting robbed or arrest and
7 losing product etc. Also, we have kidnapped friendlychemists
8 partner Xin already and are on the hunt for friendlychemist. I
9 will keep you updated on the developments. So far though we are
10 liking what we see with this site and this could be a good
11 partnership for both of us. As far as I can see, this site
12 lacks any big time suppliers. It appears it is mostly it is
13 street level independents that are buying small amounts (1oz -
14 1 kilo at a time) and selling on here. We have the product and
15 the man power to do big things here. Forgive me, but it all
16 seems a little too good to be true right now so I will need
17 some time to really research this before I make any sort of
18 commitment."

19 From Dread Pirate Roberts to redandwhite:

20 "I understand, and that is great news about Xin. If I
21 understand the situation, he is the one responsible for your
22 loss. You should definitely take your time and start slowly. I
23 would hate for you to make a mistake and be left with a bad
24 experience. Just let me know if you need anything. Also, you
25 should look into PGP. Many customers like to encrypt their

F225ulb2

Shaw - direct

1 receiving address so you should know how to decrypt it."

2 From redandwhite to Dread Pirate Roberts -- sorry, the
3 end of the last message was:

4 "When you are ready, let me know what account you want
5 to sell with and I'll cover the \$500 security deposit for you."

6 The next is from redandwhite to Dread Pirate Roberts:

7 "We are all familiar with PGP as we have been using it
8 for years via email linked to our smartphones. It's the only
9 way we communicate with each other aside from in person, since
10 phone calls are not secure. There is no loss anymore, also. We
11 were able to recover all of our missing product when we grabbed
12 Xin. After some "questioning" he admitted he was intending on
13 moving to a different country and setting up a new seller
14 account on this site. We don't take too kindly to thieves. He's
15 gone. I appreciate your offer to waive the fee, but If we were
16 to sell on here I would like to pay the same as everyone else.
17 Very kind of you though. I will be in touch."

18 March 29, 2013, from friendlychemist to Dread Pirate
19 Roberts:

20 "u leave me no choice i want 500k usd withn 72hrs or i
21 am going to post all the info i have. i cant go back to my home
22 and i had to move my kids and wife somewhere and i need the
23 money so i can move my family and start a new life. i hate to
24 do this but i need the money or im going to release it all.
25 over 5000 user details and about 2 dozen vender identities wats

F225ulb2

Shaw - direct

1 it going to be?"

2 From Dread Pirate Roberts to friendlychemist:

3 "Don't do anything foolish. The people that you owe
4 money to have caught up with Xin and reclaimed their loss. I
5 spoke to them and calmed them down. They are likely going to
6 become vendors here on SR. Now you can calm down too. Go back
7 to your normal life and don't get involved in this stuff any
8 more."

9 From friendlychemist to Dread Pirate Roberts:

10 "u dont think i kno what they did to xin? u think i
11 can just go on with my life? u dont know these ppl. i owed them
12 money and i ran away from them. its over for me. i need that
13 money to start over somewhere else with my family. i need it! i
14 dont want to do this but if u dont give it to me i have no
15 choice they are still telling me that i hav to meet them and i
16 kno what will happen. i cant let that happen! even if they say
17 it is ok i kno they will do the same thing to me. they say
18 everything is ok but i kno what they will do! 63 hours..
19 please.. dont force me to post everything. 500k is nothing to u
20 but its life and death for me they told me that i have a free
21 pass and that they dealt with it with xin but i kno that they
22 are doing that to make me think its ok and then get me! thats
23 how these ppl operate!"

24 From Dread Pirate Roberts to friendlychemist:

25 "Do me a favor and make it 96 hours. I will get back

F225ulb2

Shaw - direct

1 to you on Monday. I want to work this out, but I have big plans
2 for this weekend and don't want to have to deal with this."

3 From Dread Pirate Roberts to redandwhite:

4 "Hi again R&W, I hate to come to you with a problem
5 when we are just starting to get to know one another, but Blake
6 (FriendlyChemist) is causing me problems. Are you still looking
7 for him or now that you've found Xin have you given up? I would
8 like to put a bounty on his head if it's not too much trouble
9 for you. What would be an adequate amount to motivate you to
10 find him? Necessities like this do happen from time to time for
11 a person in my position. I have others I can turn to, but it is
12 always good to have options and you are close to the case right
13 now. Hopefully this is something you are open to and can be
14 another aspect of our business relationship. Regards, DPR"

15 Now, Mr. Evert, could you put that message on the top
16 of the screen, please? On the bottom of the screen can you
17 please publish Government Exhibit 241 -- this is already in
18 evidence, a file that was recovered from the defendant's
19 computer -- and zoom in on the entry from March 28, 2013 from
20 March 29, 2013?

21 3/28/2013: Being blackmailed with user info. Talking
22 with large distributor (hell's angels).

23 3/29/2013: Commissioned hit on blackmailer with
24 angels.

25 Now go back to the message, Mr. Evert?

F225ulb2

Shaw - direct

1 March 30th, 2013 from redandwhite to Dread Pirate
2 Roberts:

3 "What is the problem? We usually tend to stay away
4 from hits as they are bad for business and bring a lot of heat.
5 Is it a problem that can be resolved or does it need to be
6 dealt with sternly? As of right now, we don't care about him
7 because we retrieved more from Xin than what he took from us,
8 and he also paid for it with his life. Debt paid in our books.
9 As far as rates go, we don't have a flat rate for things like
10 that. It's on a case by case basis. Usually we pay our hitters
11 a percentage of what the person owes +/- how much they can
12 retrieve. If it's strictly a hit because they don't want the
13 person around anymore it's also different. Does he owe you
14 money or do you just not want him around anymore? I can send a
15 couple of my guys to do recon to find out exactly where he is
16 right now in the meantime until I hear back from you."

17 From Dread Pirate Roberts to redandwhite:

18 "If you can find his location, that may be enough for
19 me to scare him off. He is trying to blackmail me. Just let me
20 know what you need to make this worth your while."

21 From redandwhite to Dread Pirate Roberts:

22 "If I find his location, and you use it against him to
23 scare him, there is a chance he will switch locations again.
24 Speaking from experience, it will become a lot more difficult
25 to find him again after that once he knows there are people

F225ulb2

Shaw - direct

1 capable of finding, him looking for him."

2 "Further, the people we use to do the recon are the
3 hitter themselves. I don't think they will be interested in
4 continuing looking for him if there will be a small sum to be
5 split between them just to find his address. If you have your
6 mind set on just finding his location, I can talk to them and
7 get them to get it for you for a fee (not sure what amount as
8 usually when we hunt someone, there is more involved after we
9 find them). If you want to deal with him the other way, we can
10 talk about that too, but price varies on the situation. If you
11 want it to look like an accident, it would cost a lot more. It
12 wouldn't be suspicious. He would just leave home one day and
13 not return. If you don't care what it looks like, it would be
14 cheaper than the accident. We use professionals and not street
15 level hoodlums who always end up fucking things up. How much
16 does he owe you and how much are you willing to pay? If there
17 are funds retrieved, how much would we keep from what he has
18 when we get him(if he has anything) ?"

19 From Dread Pirate Roberts to redandwhite:

20 "He doesn't owe me anything, but he is threatening to
21 expose the identities of thousands of my clients that he was
22 able to acquire working with Xin if I don't pay him off. As you
23 don't take kindly to thieves, this kind of behavior is
24 unforgivable to me. Especially here on Silk Road, anonymity is
25 sacrosanct. It doesn't have to be clean, and I don't think

F225ulb2

Shaw - direct

1 there are any funds to be retrieved."

2 From redandwhite to Dread Pirate Roberts:

3 "Price for clean is 300k+ USD. Price for non-clean is
4 150-200k USD depending on how you want it done. These prices
5 pay for 2 professional hitters including their travel expenses
6 and work they put in. We can use out of town hitters if you
7 want as well, but I would not suggest them because they come
8 with an extra cost and you don't seem to care how he is taken
9 care of. When would you like this done?"

10 March 31st, 2013 from Dread Pirate Roberts to
11 redandwhite:

12 "Don't want to be a pain here, but the price seems
13 high. Not long ago, I had a clean hit done for \$80k. Are the
14 prices you quoted the best you can do? I would like this done
15 asap as he is talking about releasing the info on Monday."

16 From redandwhite to Dread Pirate Roberts:

17 "I'm sorry, but we can't do anything for that price.
18 Best I can do is 150 and even that is pushing it. Since you
19 need a rush job done, usually we would charge even more. In the
20 interest of business relationship to be, I could do 150. No
21 lower. If 150 does not work for you, we are going to have to
22 pass. We use professionals, and we pay them a good price.
23 Always send them out in a team of 2+.. 75k each for expenses
24 and the job is a fair amount I think. We have one of his
25 associates, and we're paying him to set him up for us. We'll

F225ulb2

Shaw - direct

1 pay for that ourselves on our end. I'm guessing you will not be
2 able to pay by cash, so how would payment work since you need
3 it done before monday?"

4 From redandwhite to Dread Pirate Roberts:

5 "If you want it done by Monday that only leaves today.
6 It's Sunday morning here. We always seem to miss each other
7 online, so I will leave a bitcoin address in case you want to
8 pay that way. Probably best so we can get used to dealing with
9 bitcoins anyways since we will be selling here more than likely
10 in the next week or two. I will check the computer in about 10
11 hours and If I see that you do want to go ahead with this, and
12 payment has been sent we'll do it today."

13 So then there is 1MWCS1ID and a lot of other
14 characters.

15 "If you want picture confirmation of the job
16 afterwards, give me random numbers and I will have them write
17 them beside him and take a picture for you."

18 From Dread Pirate Roberts to redandwhite:

19 "Thank you R&W. I've only ever commissioned the one
20 other hit, so I'm still learning this market. I have no problem
21 putting my faith in you and I am sure you will do a good job.
22 The exchange rate is above 90 right now, so at \$90/btc, \$150k
23 is about 1670 btc. If the market tanks in the next few days, I
24 will send more. Here are some random numbers for a picture:
25 83746102 Here is the transaction # for 1670 btc to" --

F225ulb2

Shaw - direct

1 And then there is long strings of characters:

2 "Good luck and be safe, DPR"

3 Before we move on, Mr. Shaw, let me direct your
4 attention to this here. Do you recognize what that is?

5 A. Yes.

6 Q. What is that?

7 A. It appears to be a bitcoin address.

8 Q. Mr. Evert, can we publish the top of the page, please? Can
9 we put up Government Exhibit 630 on the bottom of the screen
10 that has already been admitted into evidence? And just zoom in
11 on the top portion, here.

12 So, Mr. Shaw, do you recognize what this depicts?

13 A. Yes.

14 Q. And what does it depict?

15 A. A bitcoin transaction, a log from the block chain.

16 Q. Is there any information from this message reflected in
17 this message from the block chain?

18 A. Yes, there are two pieces.

19 The bitcoin address, the 1MWV on the top matches the
20 1MWV on the bottom. Additionally, the transaction number
21 listed here 4A0A is match on the bottom, 4A0A.

22 Q. What does the block chain indicate about this transaction?

23 A. This indicates that a bitcoin transaction occurred with
24 1670 bitcoins being spent from these four addresses and the
25 destination was to this address with the 1MWV.

F225ulb2

Shaw - direct

1 Q. And what is the date of the transaction?

2 A. It is March 31st, 2013.

3 Q. Is that consistent with the date in the private message?

4 A. Yes, it is.

5 Q. Mr. Evert, can we continue on to the next message, please?

6 March 31st, 2013 from redandwhite to Dread Pirate

7 Roberts:

8 "I received the payment. I appreciate the offer if
9 bitcoins lower in value. We know where he is. He'll be grabbed
10 tonight. I'll update you."

11 April 1, 2013 from redandwhite to Dread Pirate

12 Roberts:

13 "Your problem has been taken care of. They seized a
14 bunch of stuff he had with him at the time as well. They said
15 he had a couple laptops and a bunch of usb sticks. Is there
16 anything of that, that belongs to you? They questioned him and
17 he spilled everything he knew. He said that he and Xin were
18 actually working together on this scheme to blackmail you and
19 that they were brought in by a 3rd guy who has been selling on
20 here for a couple years who is a scam artist. Apparently he
21 makes selling accounts, sells for a while and then pulls a big
22 scam and he just keeps creating new accounts after he does his
23 scams. They got that guys name also , I will give that to you
24 free of charge when I meet them to get the picture and computer
25 hardware they got. Rest easy though, because he won't be

F225ulb2

Shaw - direct

1 blackmailing anyone again. Ever."

2 Can you put that on the top of the page, please?

3 And Mr. Evert on the bottom can you please put
4 Government Exhibit 241 which has already been admitted into
5 evidence which is the same file from the defendant's computer
6 and go to April 1st, 2013?

7 4/1/2013: Got word that the blackmailer was executed.

8 We will continue on with the next message.

9 April 2, 2013: From Dread Pirate Roberts to
10 redandwhite:

11 "Excellent work. Please send any info you can get on
12 this third party along with the picture. The picture can be
13 uploaded here: <http://silkroadvb5piz3r.onion/silkroad/upload> I
14 have no need for any of his possessions, so you can do what you
15 want with that stuff. Thank you again for your assistance, DPR"

16 From redandwhite to Dread Pirate Roberts:

17 "Okay my guys are here now and here is the information
18 they extracted from FriendlyChemist before the deed. They were
19 working with a guy - real name of Andrew Lawsry of Surrey.
20 Apparently this is the guy that turned them on to frauding
21 people on here. He said that he started selling on silkroad a
22 couple of years ago and since then he has made a career of
23 making new seller profiles to sell and then rip people off. He
24 told them how to start on here and how to rip people off and
25 asked for a percentage in return. He said that he showed them

F225ulb2

Shaw - direct

1 everything about how to sell and how to pull it off and all
2 that stuff. He didn't remember all of the account names he uses
3 or used but he said that tony76 and nipplesuckcanuck were two
4 of his names and that he has other seller accounts for people
5 he set up or is running himself. I also went and looked at all
6 of the possessions they seized from him. The laptops were empty
7 besides Tor and a couple other programs. The USB sticks he had
8 were packed full of text files with thousands of addresses from
9 all around the world. We destroyed everything we seized from
10 him, but I kept a text file that was named "blackmail.txt" that
11 had a ton of addresses in it like the other text files. Since
12 you mentioned that he was trying to blackmail you with that
13 information, I kept that text file in case you needed it. If
14 you don't need it, let me know and I will destroy it. I also
15 have the picture with me. A question before I send it to you. I
16 am not extremely good with all this anonymity computer
17 operations, but I know that pictures store GPS information and
18 the likes that police can use in evidence. Is it safe to send
19 it over here like that? We took care of him at one of our
20 safehouses so that worries me a little. I trust your judgement,
21 so I was wondering if there was a way to delete the GPS
22 information from a picture before I send it over the internet.
23 Another quick question regarding bitcoins. How do we withdraw
24 them? I paid the hitters with my own money until I figure out
25 how bitcoins work exactly. As I understand it, mtgox is the

F225ulb2

Shaw - direct

1 main exchange. Is it safe to make an account there to withdraw?
2 Can they link it back to SilkRoad? They require verification
3 which bothers me a little so I figured you would know the best
4 way."

5 Mr. Evert, can you go back to the first part of that
6 message and zoom in on the first paragraph here with Andrew
7 Lawsry in Surrey?

8 Can we publish Government Exhibit 275 on the bottom
9 which is the .txt file recovered from the computer and zoom in
10 on bottom section starting here? Why don't you zoom in there.

11 Rogue partner details: Xin Cho Tuay

12 Address: It was our shared apartment where we worked
13 out of... he moved out when he robbed me.

14 Age: 31.

15 Surrey, British Columbia.

16 Girlfriend's name: Suzy Ngyuen.

17 redandwhite his suppliers.

18 tony76/nipplesuckcanuck personal info.

19 Andrew Lawsry of Surrey.

20 Mr. Evert, can we just continue with the conversation
21 on the next page, please?

22 (Continued on next page)

F22gulb3

Shaw - direct

1 MR. HOWARD: April 2, 2013 from Dread Pirate Roberts
2 to redandwhite: "Yes, you can destroy the info. Thanks for
3 taking a look first. Regarding image metadata you can strip
4 all that out and it is a good practice. The upload page is
5 secure, but I would still have access to that metadata. Of
6 course, you can trust me but what if I was compromised. Do a
7 search of 'remove image metadata' a decent one for windows can
8 be found here. Regarding bitcoin withdrawal I would avoid
9 Mt.Gox if at all possible, especially if you're withdrawing to
10 a USA account. There are many other exchanges that don't have
11 so much attention on them. You can find a list here."

12 And then provides a link.

13 "I am reluctant to give you a specific recommendation,
14 but look for ones offshore on that list that will do an
15 international wire transfer for a direct bitcoin payment.

16 "tony76 and nipplesuchcanuck were both blights on an
17 otherwise great track record. What do you think about going
18 after Andrew Lawsry? This guy has probably ripped off millions
19 of dollars at this point from me and the rest of the Silk Road
20 community."

21 April 4, 2013, from Dread Pirate Roberts to
22 redandwhite: "Are you sure the name isn't Andrew Lawry? Or
23 some other variant? I can't find a surname anywhere of Lawsry.
24 And do you have any other info at all on this person."

25 April 5, 2013 from redandwhite to Dread Pirate

F22gulb3

Shaw - direct

1 Roberts: "I have sent the file. I had to make sure I did the
2 information removal properly before I sent it so that it did
3 not send GPS information with the picture in case it was
4 intercepted somehow. Please delete the picture as soon as you
5 take a look at it. As for the name, it's Andrew Lawsry, aka
6 Tony76 aka nipplesuckcanuck aka some other names I do not know.
7 From what I got from FriendlyChemist, he has other names on
8 here as well or is working with other vendors on here like I
9 mentioned before.

10 "As for your question about going after him, I would
11 need to do some asking around to see what kind of information
12 my guys can get on him. Would you like me to look into it."

13 From Dread Pirate Roberts to redandwhite: "Yes,
14 please. If you can find him, I would like to know."

15 April 5, 2013 from redandwhite to Dread Pirate
16 Roberts: Did you get the picture? Let me know so I can delete
17 the rest of the one I have. Finding him would be possible. I
18 can almost guarantee it, but I stop short of guaranteeing
19 anything unless I am 100 percent certain I can get the job
20 done. I do that so I don't look like an idiot. If I can't
21 accomplish something I have said I can. We have a huge stake
22 in the trafficking on this side of the country, so if he is
23 grabbing product from anyone, we would be able to find out who
24 and get to him. Would you want him dealt with if possible? I
25 ask because I don't want to send people to hunt for him and

F22gulb3

Shaw - direct

1 then nothing come of it once they find him. Please don't
2 forget to delete that picture."

3 From Dread Pirate Roberts to redandwhite: "I've
4 received the picture and deleted it. Thank you again for your
5 swift action. I would like to go after Andrew, though it is
6 important to me to make sure he is who Blake said he is. I
7 would rather miss the chance to take him out, than hit an
8 innocent person. If he is our man then he likely has
9 substantial assets to be recovered. Perhaps we can hold him
10 and question him.

11 "I'd like to connect with you in real-time chat to
12 discuss this with you further. I have a secure system set up
13 that we can connect through. It requires downloading the chat
14 client pidgin and the plugin off the record OTR and some basic
15 configuration to connect. If you're open to the idea, I'll
16 send you the instructions. This is how I communicate with my
17 closest people. If not, we can keep it here, but it is much
18 slower."

19 From redandwhite to Dread Pirate Roberts: It was my
20 pleasure. I hate thieves almost as much as I hate informants.
21 About holding and questioning someone. It adds to the risk
22 somewhat the longer we have a target/transport a target. The
23 safest way is to get in, do it, and get out as soon as
24 possible. Are there any way to verify he is the intended
25 target? Making him speak would not be a problem and of course,

F22gulb3

Shaw - direct

1 we would not have him done in if he was not right person we
2 were looking for.

3 "Since you said you'd like to go after him, I will
4 send two of my guys to do some recon right now and find out
5 what I can about him and get back to you immediately. We can
6 discuss price later once we know more.

7 "As for the real time chat, send the information over
8 and I will have my tech guy look at it. He handles all my
9 security with phones and pgp blackberries so he would probably
10 know better than me how to set everything up."

11 April 6, 2013 from Dread Pirate Roberts to
12 redandwhite: "My gut tells me he's our man, but I would hate
13 to be wrong. Your men were able to get info from Blake, maybe
14 they can do the same with Andrew. He is likely sitting on many
15 thousands of stolen bitcoin perhaps tens of thousands, so I
16 would think we'd want to "work him over" to get those funds
17 back. They could be on an encrypted drive only he can unlock.
18 Taking him out would erase those coins forever. In the process
19 of getting him to return the funds, I hope we could confirm
20 that he is indeed the one Blake says he is. Here are the
21 instructions for accessing the chat server from a windows
22 computer. Download and install pidgin," and a link.

23 There are a number of instructions. The last
24 instruction says "No. 13 add buddy 'dread.'"

25 Go to the next message: From redandwhite to Dread

F22gulb3

Shaw - direct

1 Pirate Roberts: "I got all the information correct, but when I
2 try to connect it is stuck on 'connecting.' I have the correct
3 port that Tor is listing on."

4 From redandwhite to Dread Pirate Roberts: "I have
5 found out who Andrew is exactly and who he was picking up his
6 supply from. I talked to his supplier and he said he mainly
7 grabbed heroin, coke, MDMA and LSD. He said he always goes
8 through phases where he grabs a ton of product and then stops
9 for a couple of weeks and then starts again. Sounds consistent
10 with what FriendlyChemist said about how they run the stealing
11 from the buyers on here. He said last he heard from Andrew (a
12 couple of days ago), he said he was planning on moving out of
13 the province because things were too hot down here. That might
14 be because he has found out Xin and FriendlyChemist and is now
15 scared.

16 "I also had a chance to actually sit down and talk to
17 my hitters about exactly what happened and how everything went
18 down in detail. They said that FriendlyChemist was pleading
19 with them and offering to give up Andrew, and that Andrew was a
20 seller here by the name of tony and a bunch of other names
21 (nipplesuckcanuck amongst others). He said that when he first
22 turned them on to the idea of doing this big scheme that he
23 would often talk about how he stole so much money, and that he
24 once stole 15,000 online currency coins from one person on the
25 site and how easy stealing money was on here. Does that ring a

F22gulb3

Shaw - direct

1 bell? Did he steal 15,000 bitcoins from a buyer here? That
2 would be an easy way to find out if this Andrew person is the
3 same person you think it is. Do you have his transaction
4 history to see if he did actually steal 15,000 bitcoins from
5 someone? I trust my hitters to do a good job and they are
6 excellent at what they do. Which is take people out or
7 interrogate/scare people, and they told me that they didn't
8 think he was lying.

9 "The info I have on him right now, is that he
10 works/lives with three other people and they all sell product
11 together. They are planning on leaving the province soon (I
12 don't know when). He is in contact with his supplier who
13 actually through a line of middlemen gets his product from us a
14 the end of the food chain.

15 "Do you want to deal with this Andrew guy, or do you
16 want me to put the team on standby."

17 From Dread Pirate Roberts to Redandwhite: "I am
18 confident enough that it is him to move forward. Can we round
19 up all four of them, separate them, and get them to out each
20 other and give up their stolen money? Recovering the funds is
21 going to be tricky if you aren't in direct contact with your
22 team, or if your team doesn't know how bitcoins work.

23 "If you have the other users names FC mentioned, that
24 will help me piece together things on my end. Regarding Chat,
25 there should be a certificate you have to accept when it

F22gulb3

Shaw - direct

1 connects. Does that show up."

2 From Redandwhite to Dread Pirate Roberts: "It won't
3 even connect. It just is stuck on connecting nl copy and
4 pasted all the information for the login and password, etc. So
5 it should be Good. I also checked Tor to see what port to use.
6 Won't connect for some reason. Do I have to fill in anymore of
7 the details, local Alias or anything like that.

8 "As for getting all four, it would be possible but
9 they would have to get them all at once so that one does not
10 get away. I would send four hitters instead of two to make
11 sure there With were no fuck ups. I'm not sure when they are
12 planning on leaving the province though. The guy that has been
13 feeding me information on him says the guy is a degenerate
14 gambler so I don't know how much funds he will have on hand.
15 He says he owes a ton of people money too. My guess is that he
16 is pulling these scams to fuel his gambling problem like a
17 degenerate. It would make sense why he is also teaching other
18 people how to scam as well when it has been so profitable for
19 him to keep to himself. Probably because he owes them money
20 and offers to show them how to do it, as a way of paying them
21 back. I will have them take whatever they have on hand, but I
22 don't want my hitters to be hanging around with them for too
23 long since they are doing four people.

24 "Unfortunately, there are no bulk discounts for jobs
25 like this. Usually the price goes up the more difficult it is.

F22gulb3

Shaw - direct

1 Since you are easy to work with, I would be able to offer you
2 the same rate as last time x4. If that works for you, let me
3 know. If it doesn't, please also let me know as soon as you
4 can so I can call my guys off. They have been doing info
5 gathering this whole time on Andrew and his crew."

6 From Dread Pirate Roberts to redandwhite: "OK, let's
7 just hit Andrew and leave it at that. Try to recover the
8 funds, but if not, then not. How much do you need for this?
9 I'm not sure what the problem could be with chat. Please
10 upload some screenshots of the settings you are using and the
11 main pidgin window."

12 April 8, 2013 from Redandwhite to Dread Pirate
13 Roberts: "If you want to hit Andrew only, I can have it done
14 for 150 just like last time. We wouldn't be able to do it at
15 their place though because there are always at least a few of
16 them there from what I'm told since it is their home/office.
17 So we wouldn't be able to recover any of his things. It's up
18 to you what you want done, but we can't send hitters into their
19 house/office if they are only doing one of them. Do you not
20 need the people he is working with dealt with also? If they
21 are all working with him, it means they are doing the same
22 thing as him. It would also be easier for the hitters to get
23 them in there so that they would have a chance of recovering
24 anything if he has anything there. It would also be better
25 because it wouldn't be a public hit. If we take just Andrew,

F22gulb3

Shaw - direct

1 there's nothing to say that the other three won't start up
2 somewhere else with new selling IDs. It is of course up to you
3 what you want done and how, since you are they client.

4 "I was pretty certain you would want them all taken
5 care, so I had an associate send me a couple of his out of town
6 hitters to accompany our local hitters. It's not a problem as
7 I can just send them back and cover their travel expenses, but
8 I obviously would like for them to not go back empty handed.
9 My mistake for not confirming what you wanted before I had the
10 extra hitters sent down, but it's not really a problem if you
11 don't want the others dealt with. I had a hard time connecting
12 to Silk Road for the last 24 hours or I would have asked before
13 having them sent down. So if you would like to do the others
14 as well, I would be able to have it done for 500k USD. If you
15 do not want all of them, and just Andrew it would be 150k. I
16 would prefer to do all four as it would be better than having
17 to get Andrew somewhere else and have no chance of recovering
18 any potential product/money he may have. Anything recovered
19 would be split 50/50 with you. If you are certain that he has
20 that much product/money I think it would make sense to do it at
21 their home/officer. It's up to you though, just let me know
22 what do do as soon as you can since I do not know when they are
23 leaving the province and if they do leave the province the
24 price would go up exponentially.

25 "If you would like Andrew done send 150k USD to the

F22gulb3

Shaw - direct

1 same address you sent the other funds to.

2 "If you would like all four of them done and
3 product/money recovered from there send 500k USD to the same
4 address you sent the other funds to."

5 To the next page, please. Let's go down to this
6 message. April 8, 2013, from Dread Pirate Roberts to
7 Redandwhite: "I see your problem, you need port 9150, not
8 9151. 9151 is the control port, 9150 is the socks port. Hmmm,
9 ok, I'll defer to your better judgment and hope we can recover
10 some assets From them, 500k in btc 3000 at \$166/btc has been
11 sent to," and then there's a long string of characters, numbers
12 and then transaction number and a long string of characters and
13 numbers.

14 Q. Mr. Shaw, do you recognize what these numbers are?

15 A. Yes.

16 Q. And what are they?

17 A. The number beginning with 1Mwv is a bitcoin address and the
18 long string beginning with e7db is a block chain transaction
19 number.

20 MR. HOWARD: So Mr. Evert, could you please publish
21 this to the top of the screen, please. And please publish
22 Government Exhibit 631, which has already been admitted into
23 evidence on the bottom. And can you zoom in on the top part
24 here.

25 Q. Mr. Shaw, do you recognize what this depicts?

F22gulb3

Shaw - direct

1 A. Yes, I do.

2 Q. What does this depict?

3 A. This is a record from the block chain, the bitcoin block
4 chain.

5 Q. Can you tell me what's reported here on this part of the
6 block chain?

7 A. Yes. On the top left Beginning with the e7db52, that is
8 the transaction number associated with this bitcoin transfer.
9 And on the right side here, the string beginning with 1Mwv,
10 that is the bitcoin address that the funds were transferred to.
11 And in this transaction, there were 3,000 bitcoins transferred
12 from these three bitcoin addresses on the date of April 8,
13 2013.

14 Q. Mr. Shaw, how does that information in the block chain
15 compare to the information in the private message we just read?

16 A. It is a match.

17 MR. HOWARD: Can we continue with the chats,
18 Mr. Evert -- Sorry. One more thing. Can we publish 241 from
19 the defendant's computer. Can we go to page two, please. And
20 zoom in on the entries from April 6, 2013 to April 8, 2013.

21 So April 6, 2013, the second line here says "Gave
22 angels go ahead to find tony76."

23 April 8, 2013, "Sent payment to angels for hit on
24 tony76 and his three associates."

25 Mr. Evert, can we please go back to the chat, please.

F22gulb3

Shaw - direct

1 April 9, 2013 from Redandwhite to Dread Pirate
2 Roberts: "I was finally able to connect but it seems you are
3 offline. I will have them go take care of that thing asap. I
4 will update you as soon as I hear more."

5 From Dread Pirate Roberts to Redandwhite: "Glad to
6 hear you could connect. I am connected quite a bit so keep
7 trying and I'm sure we'll cross paths."

8 April 11, 2013 from Redandwhite to Dread Pirate
9 Roberts: "Hey there. Still haven't been able to catch you on
10 pidgin. I added you as a buddy but you don't show up in my
11 buddies list. When adding a buddy, I leave everything blank
12 and just put the use name as dread, correct? Our hitters have
13 been watching their house and we have a one week window to do
14 it but I wanted to ask you a couple questions before giving
15 them the green light.

16 "The price of bitcoin's trading at 61USD right now.
17 How is this going to work, because you mentioned that you would
18 take care of the price fluctuations. We haven't withdrawn any
19 of the bitcoins.

20 "Can you also give me some insight on this price
21 business? I have been rallying our people to get involved will
22 selling on here, and they seem very interested but they are
23 saying we would lose money because of the price going up and
24 down so much and not being able to withdrawal fast enough to
25 not lose money."

F22gulb3

Shaw - direct

1 April 12, 2013 from Dread Pirate Roberts to
2 Redandwhite: "Check out this link."

3 And there's a dot-onion address provided ending in
4 "Seller'S Guide."

5 "Pay special attention to the Part about escrow
6 hedging. I don't think this place would be possible without
7 it, at least not in the form it's in now.

8 "Regarding the 3k coins I sent, get the best price you
9 can for them and let me know if you are short and I will send
10 more to cover it.

11 "Regarding Chat I made a mistake, you should add me as
12 dread@pi5mmjtronhutxyv.onion. I'm going to connect us manually
13 so that may not be necessary."

14 April 15, 2013 from Redandwhite to Dread Pirate
15 Roberts: "The problem was dealt with. I'll try to catch you
16 online to give you details. Just wanted to let you know right
17 away so you have one less thing to worry about."

18 From Dread Pirate Roberts to Redandwhite: "Thanks,
19 See you on chat."

20 From redandwhite to Dread Pirate Roberts: "3:30 PST
21 tried to catch you online but no luck. Want to link up at the
22 same time tomorrow."

23 And Then Dread Pirate Roberts Responds: "Sure, I'll
24 make sure I am online at 3:30 p.m. PST."

25 April 18, 2013 from Dread Pirate Roberts to

F22gulb3

Shaw - direct

1 redandwhite: "It's nearly 4:00 P.M. PST. I need to run some
2 errands. I will probably be back on later though."

3 April 21, 2013 from Redandwhite to Dread Pirate

4 Roberts: "Sorry I wasn't able to make it on. I've had some
5 problems I've been dealing with, I came online today to see if
6 I could catch you but no luck. I will wait online until
7 6:00 p.m. PST. I've give you a brief rundown here just to let
8 you know what happened. My crew did their job. As far as
9 money/product/bitcoins/seller accounts. Money: They had
10 \$15,000 Canadian dollars on site. Product: They had a quarter
11 kilo of cocaine and two ounces of heroin. Bitcoins: They have
12 been giving a third party bitcoins who cashes out for them.
13 The guy has roughly 350 bitcoins of theirs currently owing to
14 them. The exchange guy is not in on the scam and is just some
15 exchanger who sends them funds via Western Union and they have
16 been using him from the start apparently. I don't know what to
17 do about that. Seller accounts: They were in the process of
18 setting up another account to sell heroin and cocaine. They
19 said a few of their friends know about this, so be on the
20 lookout if anyone from Canada starts to sell heroin and
21 cocaine.

22 "I also took a big loss. After you sent me the extra
23 coins to cover the price going down when it was at 90, it
24 started to crash again. It was at 65 and people were talking
25 about how it's going to go down even more, so I made a deal

F22gulb3

Shaw - direct

1 with an exchanger to take them all at 50 and sell them for me
2 in case it went down even lower. Of course, after I made that
3 deal it has now started to rebound again but I'm out 250k. I'm
4 not telling you this because I think you should cover it. In
5 fact I don't want you to cover it. You already did more than
6 you needed to do when you covered the price crashing the first
7 time. I am just letting you know because this will cause a
8 delay in us starting here because I was planning on covering
9 the mens wages of 1,000 a day of street money to start selling
10 on here until it gets busy enough for them to be paid via a
11 percentage of what they sell here. It was my mistake for not
12 arranging someone to take the entire bitcoin amount as soon as
13 I had received it, instead of letting it sit and have the price
14 crash.

15 "Hope to catch you online soon, as I have started on
16 that reading material and I love what I am reading so far.

17 "Talk soon."

18 Dread Pirate Roberts Responds: "Okay. I'll look for
19 you as well, but probably won't be online for the whole day
20 again until Tuesday."

21 June 1, 2013 from redandwhite to Dread Pirate Roberts
22 titled update: "I have some news regarding our organization
23 selling on here. A bunch of chapter leaders flew into town for
24 a meeting and the main topic of discussion was actually silk
25 road. Would you be able to meet on pidgin at 3:00 p.m. PST on

F22gulb3

Shaw - direct

1 Sunday to discuss? There was quite a bit of stuff covered on
2 the topic."

3 Mr. Evert, can you please publish 227D as a dog, it's
4 a chat log that we have not yet read in. This is from page 332
5 to 333 of a 337 page chat log.

6 April 3, 2013: "myself: I get blackmailed by a guy
7 saying he's in deep shit with hell's angels

8 Myself: he says he was fronted \$700k in LSD from them

9 Myself: he gave it to lucydrop to sell on sr

10 Myself: he said lucy took off with the product

11 Myself: i said, have the hells angels contact me so i
12 can work something out

13 Cimon: ha!

14 Myself: very foolishly he did

15 Myself: they said they caught up with lucy, got the
16 product back and killed him

17 Myself: I didn't hear from the blackmailer agian so i
18 thought the case was closed

19 Cimon: wait-- I'm missing something here

20 Myself: go ahead

21 Cimon: how was he blackmailing?

22 Myself: oh yea

23 Myself: he had thousands of addresses from customers
24 and vendors

25 Myself: he said he installed a keylogger on lucys comp

F22gulb3

Shaw - direct

1 Myself: he was threatening to release all of the user
2 addresses

3 Myself: make sense

4 Myself: ?

5 Cimon: yeppers.

6 Cimon: now it does

7 Myself: ok, so this last friday he says I have 72
8 hours to send him half a mil or he's releasing the info

9 Myself: by this time I've sold the hell's angels on
10 becoming vendors themselves

11 Myself: so I ask them if they are still after the guy

12 Myself: they say no, debt was paid when they caught up
13 to lucydrop, so I pay them to hunt down the blackmailer.

14 Myself: he's gone on the run by this time fyi

15 Myself: they catch up to him within a day and he sings

16 Cimon: well, I bet ya he won't use the HA as a
17 reference again any time soon

18 Myself: says he was in cahoots with lucy all along and
19 ripping the angels off and black mailing me was part of the
20 plan

21 Myself: he also said a 3rd party, our man tony76
22 orchestrated the whole thing

23 Myself: gave up his id

24 Cimon: ahhh, and that's how you got tony, fucking
25 excellent

F22gulb3

Shaw - direct

1 Myself: he's a brit

2 Cimon: how very convenient, where's he located

3 Cimon: more or less, of course

4 Myself: lemme look it up. I have the town

5 Myself: gotta look up the message on SR

6 Myself: helluva story eh?

7 Cimon: Man, I still can't believe tony fell into yer
8 lap. Wonder if DA is hanging around the edge of that mix.

9 Myself: somehow I doubt it

10 Myself: have you tried connecting on pidgin?

11 Cimon: So how does tony 'train' other folks to rip you
12 off?

13 Cimon: installing it on my other laptop

14 Myself: not sure, prolly just shows them how to use SR
15 in general, how to get good feedback, and then how to maximize
16 the rip off at the end

17 Myself: the guy is from Surrey apparently

18 Cimon: I thougtht he was cali-based, or am I
19 completely confused

20 Myself: why did you think that?

21 Cimon: I thought that was the conclusion when he did
22 the rip off

23 Myself: I don't remember that

24 Cimon: yeah, I must be mis-remembering that

25 Myself: nipplesuckcanuck sounds canada based

F22gulb3

Shaw - direct

1 Myself: vancouver

2 Cimon: How old is the info on tony, and does he know
3 or suspect you have his info?

4 Myself: it is less than 2 days old, and the only thing
5 he should know is that his two guys aren't getting back to him

6 Cimon: ok, installed pidgin here, adding the xmpp
7 server account...

8 Cimon: Gotta mess about here with proxy tor will
9 likely drop off for a few minutes while I configure it

10 Myself: ok."

11 MR. HOWARD: Your Honor, at this time I'd Like to read
12 a stipulation into the record, Government Exhibit 805.

13 THE COURT: All Right.

14 MR. HOWARD: It Is hereby stipulated and agreed by and
15 between the United States of America by Preet Bharara, the
16 United States Attorney for the Southern District of New York,
17 Serrin Turner and Timothy Howard, Assistant United States
18 Attorneys of counsel and Ross Ulbricht, by and through his
19 counsel Joshua Dratel, Esq. as follows:

20 (1) Canadian Law Enforcement Authorities have no
21 record of any Canadian residents named Blake Krokoff or Andrew
22 Lawsry or any name associated with "FriendlyChemist."

23 (2) Canadian Law Enforcement Authorities do not have
24 any record of any homicide occurring in the area of white rock,
25 British Columbia on or about March 31, 2013 or any record of

F22gulb3

Shaw - direct

1 any homicides occurring in the area of Surrey, British Columbia
2 on or about April 15, 2013 or any other evidence that anyone
3 was physically harmed as a result of the plans discussed by
4 "Dread Pirate Roberts" and "redandwhite."

5 We further stipulate and agree that the
6 above-referenced exhibits and this stipulation, Government
7 Exhibit 805, are admissible as Government exhibits at trial,
8 except that the Defendant reserves the right to object to these
9 exhibits under Federal Rules of Evidence.

10 MR. DRATEL: So stipulated, your Honor.

11 THE COURT: Received. Government Exhibit 805 is
12 received.

13 (Government's Exhibit 805 received in evidence)

14 Q. Now, Mr. Shaw, did you discover any transactional data in
15 the databases that you reviewed?

16 A. Yes, I did.

17 Q. Could you please flip in your binder to what's been marked
18 for identification purposes as Government Exhibit 920B as in
19 boy.

20 A. Okay.

21 Q. Do you recognize what this is?

22 A. Yes, I do.

23 Q. And what is that?

24 A. It's a technical description of the transactions table from
25 the Silk Road Marketplace.

F22gulb3

Shaw - direct

1 Q. Did you take this screenshot?

2 A. Yes, I did.

3 MR. HOWARD: The Government offers Government
4 Exhibit 920B.

5 MR. DRATEL: Objection as to hearsay and Vayner, your
6 Honor.

7 THE COURT: The Objections are overruled. Government
8 Exhibit 920B is received.

9 (Government's Exhibit 920B received in evidence)

10 MR. HOWARD: Could we zoom in on the first column
11 here.

12 Q. Mr. Shaw, what is depicted in this column. Can you
13 describe it.

14 A. Sure. These are the fields that are present in the table
15 transactions, this means that each record stored inside of that
16 table will have information for each of these fields, though
17 they could be blank or null. Some of the information that the
18 fields here includes information as to who the buyer account
19 was, that was part of the transaction, as well as the seller
20 account that was a party to this transaction, as well as
21 payment information and commission information all stored in
22 the database.

23 Q. So each record is a separate transaction in the database?

24 A. That is correct.

25 Q. Does each record of each transaction include information

F22gulb3

Shaw - direct

1 about the product that was sold?

2 A. Yes, it does. There is information about the item ID which
3 ties to the items table in the database.

4 Q. Now, you pointed out the payment and commission fields.

5 A. Yes.

6 Q. And that information is stored for each transaction?

7 A. That is correct.

8 Q. Is that in bitcoins or dollars?

9 A. The fields that are highlighted there, 8 and 9, were in
10 bitcoins.

11 Q. And is there any information stored in each transaction
12 record about the equivalent U.S. dollars for each transaction?

13 A. Yes. There were multiple fields containing information
14 about U.S. dollars.

15 Q. Is each record in the database uniquely identified?

16 A. Yes, it is.

17 Q. And how so?

18 A. The first field is the index field, which is the
19 auto-incrementing field.

20 Q. What do you mean by auto-incremented?

21 A. That means it starts with one and then the next one would
22 be two and then three and then four.

23 Q. So the first transaction put in the database gets a number
24 one?

25 A. Correct.

F22gulb3

Shaw - direct

1 Q. And they sequentially add up as they go forward?

2 A. Correct.

3 MR. HOWARD: May I approach the witness.

4 THE COURT: You may.

5 Q. I just handed you what's been marked for identification
6 purposes as Government Exhibit 961. Do you recognize what this
7 is?

8 A. Yes, I do.

9 Q. What is this?

10 A. This is a video compiled showing some sample transaction
11 information.

12 Q. Would this aid your testimony today?

13 A. Yes, it would.

14 MR. HOWARD: The government offers 961 for
15 demonstrative purposes.

16 MR. DRATEL: No objection for demonstrative purposes.

17 THE COURT: Received for demonstrative purposes.

18 (Government's Exhibit 961 received in evidence)

19 MR. HOWARD: May I approach.

20 THE COURT: You may.

21 Q. How did you recognize this exhibit by the way?

22 A. It has my initials on it.

23 Hold it right here -- it's not to be big screen,
24 sorry.

25 What we're looking at right here is information

F22gulb3

Shaw - direct

1 extracted from the transactions table. And I've already
2 resolved information such as the buyer ID and the seller ID
3 from the appropriate table as well as resolving the item
4 description -- title and description, and the category that
5 that item fell into was categorized as well as the stored value
6 of the U.S. dollars of the transaction.

7 Could you hit play, please. Could you hit pause,
8 please.

9 For example, down here in row 15, we see a buyer with
10 the name. That doesn't line up with my screen. Sorry. Okay.
11 There we go. The buyer name sluggo318 sold product to
12 aceedeel080, the product was categorized in the "cocaine"
13 category and that was selected by the person who was who set up
14 the product for sale. So the seller selected the category of
15 that item and chose to put that item under the "cocaine"
16 category.

17 Q. Mr. Shaw, to be clear, is this all of the information for
18 each transaction or is there more information?

19 A. There's more information.

20 Q. This is only what's captured on the screen?

21 A. This is just a summary of the information; correct. The
22 description of that item was 1 gram of pure uncut cocaine, and
23 the transaction amount stored in the database in U.S. dollars
24 was \$156.50.

25 Could you hit play, please and pause, please.

F22gulb3

Shaw - direct

1 What we're looking at here is a screenshot of
2 information that was in the categories table of the Silk Road
3 Marketplace database. One example of what we're looking at
4 here, if you look at row four, it's kind of hard to see, but it
5 has an ID of seven. And each item, as you can tell, has a
6 unique number in this first column and associated with that is
7 a name of that category.

8 Now, there's also information about the parent ID, so
9 there was a concept of grouping, so you could say, you know, I
10 am selling in this case an item, LSD, and it is in group -- it
11 is group seven, but it is also -- has a parent ID of 41, which
12 when you look further down on the table at group 41 is the
13 category of psychedelics. So the idea was, you could nest
14 different categories so you could have a parent category or you
15 could have a child category, so that's what's represented here.

16 Q. So it's organizing different products into categories?

17 A. Exactly.

18 Hit play, please and pause, please.

19 And you'll notice a category of 70 below the items
20 that we were looking at in the first page fell under the item
21 of category parent ID 78, which in this case is drugs.

22 Q. What do you mean by "parent category"?

23 A. That meant that the parent ID was drugs; however, the
24 subcategory could have been, you know, psychedelics.

25 If you can hit play, please.

F22gulb3

Shaw - direct

1 Because all of this data is stored in a database,
2 you're able to quickly and easily ask it questions. What I
3 have shown here -- hit pause, please -- was a selection of
4 transactions that all fell under the "heroin" category. You
5 can read some of these.

6 For example on line nine there, there was a
7 transaction from the buyer Philbetter333 and the seller
8 Marlostanfield for, again, all of the items we're looking at
9 fell under the category of "heroin," and the U.S. dollar amount
10 stored in the database was \$183.01 and the item title was
11 number four heroin for \$150.

12 Could you hit play, please.

13 Q. So Mr. Shaw, the items in the database, were they organized
14 by categories and subcategories?

15 A. Yes, they were.

16 Q. And you just showed an example of how you were able to
17 query or ask a question of the database to pull up a sample of
18 heroin transactions, correct?

19 A. Correct.

20 Q. Could you pull up a sample of any category you'd like?

21 A. Yes.

22 Q. Could you ask the database questions to extract only
23 certain users, what their transactions are?

24 A. Yes.

25 Q. So now earlier you testified that you located multiple

F22gulb3

Shaw - direct

1 copies of the databases, correct?

2 A. That's correct.

3 Q. Where were they located?

4 A. They were located on both of the server images that I
5 received copies of.

6 Q. Now, Mr. Shaw, you testified a second ago that one of the
7 fields -- one of the pieces of information that each
8 transaction record contains is commission, correct?

9 A. That is correct.

10 Q. Now based on your review of the transaction data,
11 approximately when did transaction data start to include
12 information about commissions?

13 A. The first recorded commission that I saw in the database
14 was in the middle of 2011. I believe it was May.

15 Q. Could you please flip in your binder to what's been marked
16 for identification purposes as Government Exhibit 950. Do you
17 recognize what this is?

18 A. Yes, I do.

19 Q. And what is that?

20 A. These are some of the first transactions that had a
21 recorded commission.

22 Q. Did you take this screenshot?

23 A. Yes, I did.

24 MR. HOWARD: The government offers Government
25 Exhibit 950.

F22gulb3

Shaw - direct

1 MR. DRATEL: Objection as to hearsay and Vayner, your
2 Honor.

3 THE COURT: All right. Those objections are
4 overruled. Government Exhibit 950 is received.

5 (Government's Exhibit 950 received in evidence)

6 Q. Mr. Shaw, could you please describe what is depicted here.

7 A. Sure. These are some of the transactions that occurred.
8 Again, these all had recorded commissions and these were some
9 of the earliest ones with recorded commissions.

10 For example, the one that is highlighted in orange
11 there was a transaction for -- recorded as 14 grams of MDMA;
12 the sales price was \$337.06 in U.S. dollars recorded in the
13 database; and as recorded in the database, the commission in
14 U.S. dollars was \$16.74.

15 MR. HOWARD: Mr. Evert, would you please publish
16 Government Exhibit 226A, which is a chat log recovered from the
17 defendant's computer that we have not yet read in.

18 This is from pages 41 to 42 of a 1,096 page chat log.

19 December 7, 2011: "Vj: OK - can't go without asking -
20 whats the weekly gross sales

21 Vj: save me scraping all the feedback pages and doin
22 the math

23 Myself: wanna take a guess?

24 Vj: nope - but 450 trans a day...

25 Vj: average say \$55?

F22gulb3

Shaw - direct

1 Vj: comes to 25 grand a week, and seems low to me

2 Vj: but that's the current guesses on the board

3 Myself: yea, 450 a day is high because saturday is

4 like 350 and sunday is like 250

5 Myself: but the avg is more like \$75

6 Vj: Don't forget that xmas - end of jan is gonna slow

7 down, but growth might keep it from slowing too bad

8 Vj: but lots of folks are gonna be broke come xmas

9 morning

10 Myself: I track the monthly sales volume and it's

11 around \$500k right now

12 Myself: so, \$125k/wk or so

13 Vj: not bad for a guy that started selling shrooms, eh

14 Myself: haha

15 Myself: yep, pretty happy

16 Vj: so, why'd you stop vending, ha

17 Myself: too risky. I figured I'd be a target

18 Myself: and it was really time consuming. I grew my

19 own."

20 Pages 522 to 523 of the 1,096 page chat log, March 11,

21 2012: "Vj: [. . .] Sometime, we have to have a discussion about

22 what to do in the event of arrest or incarceration, thought

23 about that a fair bit during the last two weeks.

24 Vj: For instance, if you were arrested

25 Vj: a decision would have to be made at what point in

F22gulb3

Shaw - direct

1 time do I come get you out

2 Vj: and I would come and get you out

3 Vj: Myself, that time would be a lot longer - scary,
4 but jail doesn't scare me a whit anymore. I treat it like being
5 in a 3rd world country with poor communications infrastructure

6 Myself: I've been thinking a bit about that as well.
7 like I could put instructions for transferring control in an
8 encrypted file and give it to a family member. then I can give
9 them the password if I get put in jail.

10 Vj: and remember that one day when your in the
11 exercise yard, I'll be the dude in the helicopter coming in low
12 and fast, I promise.

13 Myself: ok

14 Vj: seriously, with the amount of \$ we're generating,
15 I could hire a small country to come get you."

16 On page 549 of the 1,096 page chat log March 14, 2012:
17 "Vj: One of the things i'd like us to look at investing in is a
18 helicopter tour company.

19 Vj: Cause you never know when one of us is gonna need
20 a helicopter!

21 Vj: Be pretty handy to have it leased already.

22 Myself: I made a declaration about 8 years ago that
23 I'd be a billionaire by my birthday in 2014. If you cound the
24 discounted future revenues of the enterprise, it could happen.

25 Vj: When yer keeping your eye on the ball, that's the

F22gulb3

Shaw - direct

1 big one.

2 Myself: yep, all that money won't be worth much if
3 we're behind bars."

4 March 22, 2012: "Vj: how much was the total for the
5 last sale.

6 Vj: ?

7 Myself: \$321,802.06 from 4197 orders

8 Vj: how many vendors do we have now?

9 Vj: and what are weekly sales?

10 Vj: hould do well over double weekly sales for the
11 sale, I'd think, quite easily moe.

12 Myself: weekly peaked out at ner \$600k, but have
13 fallen this past week to \$475k or so

14 Vj: So we'll easily break a mil for the sale - not bad
15 for a bit over a year old, eh.

16 Myself: # vendors is about 200 decent sized and active
17 vendors, and about 150 more small or new ones."

18 Mr. Evert, can you please publish 227C, another chat
19 log that was recovered from the defendant's computer that has
20 not yet been read.

21 From pages 44 to 47 of a 337-page chat log: "Myself:
22 The site is still growing on its own. Not quite exponential,
23 but more than linear.

24 Cimon: What are weekly's now?

25 Myself: Up to 1.3M.

F22gulb3

Shaw - direct

1 Myself: Try handling the entire escrow and account
2 balances of Silk Road sometime." Emoticon.

3 Page 73, October 8, 2012: "Myself: We have over 700
4 unique sellers each week. It's getting competitive on the
5 supply side.

6 Myself: Volume go up to 1.4M about a week ago.

7 Cimon: Mebbe it's time for sale, no trips this time,
8 eh"

9 January 29, 2013, "myself: We crossed a cool
10 milestone today.

11 Cimon: <pants>

12 Cimon. What what what.

13 Myself: 10k unique customers in the last week."

14 Q. Now, Mr. Shaw, were you able to run queries from the
15 database, ask questions to get total transaction amounts for
16 all the goods and services that were sold on the Silk Road
17 website?

18 A. Yes, I was.

19 Q. Could you please flip in your binder to what's been marked
20 for identification purposes as Government Exhibit 940.

21 A. Okay.

22 Q. Do you recognize what this is?

23 A. Yes. This is a summary of transactions by category.

24 Q. And were you involved in the preparation of this exhibit?

25 A. Yes, I was.

F22gulb3

Shaw - direct

1 Q. Does this chart accurately reflect the summary of the
2 transactions that were in the Silk Road Market databases?

3 A. Yes, it does.

4 MR. HOWARD: The government offers Government
5 Exhibit 940.

6 MR. DRATEL: Hearsay.

7 THE COURT: That objection is overruled. Government
8 Exhibit 940 is received.

9 (Government's Exhibit 940 received in evidence)

10 THE COURT: Mr. Howard, we're going to end at 1:00
11 for lunch. Are you able to complete this by then, this
12 document?

13 MR. HOWARD: Yes, by this document, for sure.

14 THE COURT: Thank you.

15 MR. HOWARD: Can we zoom in on the top, please. And
16 give the header as well, Mr. Evert.

17 Q. Can you please, Mr. Shaw, describe what is in this chart
18 and how it works.

19 A. Yes. So I'm taking the information from the transactions
20 table and tying it to the items and then the categories of
21 those items. We were able to add up the totals for each
22 category. So each item was assigned to one category and one
23 category only. So what we're looking at, for example, the
24 second row here of "drugs," those are items that -- were
25 assigned to the category of drugs, not to any of the

F22gulb3

Shaw - direct

1 subcategories. And this first -- all of these groupings up
2 here are kind of parent categories, top-level categories. They
3 don't have any parent IDs. So again, everything that we're
4 looking at for this row was assigned solely to the category of
5 drugs and none of it the subcategories.

6 What you can see on the chart here, the total
7 transactions that occurred for an item assigned the category of
8 drugs there were 25,976 transactions for payment in bitcoins
9 recorded in the database as 253,182.08 bitcoins. In the
10 database, the payment amount in U.S. dollars that was recorded
11 was \$9,755,333 U.S. dollars. In the database the "total
12 commission for drugs" category recorded in bitcoins was
13 11,116.70. The recorded commission in the database in U.S.
14 dollars was \$392,000,108.

15 Q. To be clear, this wasn't the transaction data for all drugs
16 on the site, correct?

17 A. That is correct.

18 Q. So what would you need to do in order to find the total
19 number amount of drugs sold, all kinds of drugs?

20 A. You would add up this category along with any subcategories
21 that were associated with this group.

22 Q. To be clear, this line item reflects products that were
23 marked as drugs but not marked with any subcategory?

24 A. That is correct.

25 MR. HOWARD: Could we zoom out, Mr. Evert, and please

F22gulb3

Shaw - direct

1 go to page two of this exhibit. Could we zoom in on these two
2 sections here.

3 Q. So Mr. Shaw, could you explain what's depicted here.

4 A. Sure. So the second column here is the parent category.
5 What you see down here in this grouping down here for brown,
6 white and black tar. They all have a parent category of 49
7 heroin. And on this line we have "category 49 heroin." So in
8 order to understand this chart, everything on this row is
9 something that was tagged as just generic heroin. It didn't
10 have any subcategory. It was just associated with the grouping
11 of the category of heroin; whereas, everything on this row was
12 categorized as brown, which was a subcategory of heroin. And
13 then everything on this row is categorized as white, which is
14 also a subcategory of heroin. And then this row was black tar
15 heroin.

16 So in order to get the total for all heroin
17 transactions, you would actually have to add up all four of
18 these rows, the heroin group, the brown group, the white group
19 and the black tar group.

20 MR. HOWARD: Zoom out, Mr. Evert.

21 Q. Mr. Shaw, what time period of transactions, what time
22 period does this data cover?

23 A. According to the timestamps in the database, it covered
24 February 6, 2011 through October 2, 2013, so the entirety of
25 what was in the database.

F22gulb3

Shaw - direct

1 Q. That's the full date -- range of transactions that are in
2 there, correct?

3 A. Correct.

4 MR. HOWARD: Can we flip to the last page of this,
5 Mr. Evert.

6 Q. Zoom in at the bottom -- to be clear, where we see category
7 names and parent names, those are defined in the database
8 itself, correct?

9 A. That is correct.

10 Q. There's this last line here that says "null" here. The
11 category name is null and parent name is null?

12 A. Right.

13 Q. What does that mean?

14 A. If the database joins between the tables didn't work, so we
15 weren't able to determine the category of the item in that
16 transaction, we assigned it to this group "null."

17 Q. In other words, are those transactions that were reflected
18 in the database but no category -- you could not determine the
19 category that it was assigned to?

20 A. That is correct.

21 Q. And there are approximately, it looks like, \$22 million
22 worth of those transactions?

23 A. That is correct.

24 Q. Could you please describe what is depicted on the last line
25 here?

F22gulb3

Shaw - direct

1 A. The last line is the total calculations for all
2 transactions in the database. You see we have 1,530,252 total
3 transactions for a recorded value in bitcoins of 9,912,070.05
4 bitcoins, for a total U.S. dollar amount recorded in the
5 database of \$213,888,103 U.S. dollars. The commission value in
6 bitcoins here is 642,455.36 bitcoins, and the recorded value in
7 U.S. dollars for the commission was 13,174,896 U.S. dollars.

8 Q. Now, Mr. Shaw, in terms of the U.S. dollar equivalencies,
9 is that reflecting the total U.S. value at any one given point
10 in time?

11 A. That was what was recorded in the database at the time of
12 the transaction.

13 Q. So as each transaction occurred, the equivalent U.S.
14 dollars was recorded in the database?

15 A. That's correct.

16 Q. And this number down here is the sum of all those
17 conversions?

18 A. That's correct.

19 MR. HOWARD: We can stop here if you'd like, your
20 Honor.

21 THE COURT: Ladies and gentlemen, we'll take our lunch
22 break and were we able to bring in lunch. We were able to
23 bring in lunch for you folks, so you don't have to deal with
24 the weather again. We'll see you at 2:00 and remind you not to
25 talk to each other or anyone else about the case. Thank you.

F22gulb3

Shaw - direct

1 Sir, you can step down and be back at 2:00.

2 (Continued on next page)

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F22gulb3

Shaw - direct

1 (In open court; jury not present)

2 THE COURT: Is there anything we should raise before
3 we break for lunch?

4 MR. TURNER: No, your Honor.

5 MR. DRATEL: I don't think so.

6 THE COURT: Let's take a break and then we'll come
7 back at 2:00. Now, I do have one criminal matter in this room
8 at 1:00, and so, I am going to need first the first two spots
9 at counsel table. Thank you.

10 (Luncheon recess)

11 (Continued on next page)

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F22gulb5

Shaw - direct

1 AFTERNOON SESSION

2 2:05 p.m.

3 (In open court; jury present)

4 THE COURT: Thank you, ladies and gentlemen. Let's
5 all be seated.

6 Mr. Howard, you may proceed.

7 MR. HOWARD: Thank you, your Honor.

8 Mr. Evert, can we publish Government Exhibit 940 and
9 go to page seven, please. Zoom in on the bottom again.

10 BRIAN SHAW, resumed.

11 DIRECT EXAMINATION CONTINUED

12 BY MR. HOWARD:

13 Q. Mr. Shaw, this is where we left off before the lunch break,
14 correct?

15 A. Yes.

16 Q. And this chart depicts over two -- sorry -- \$213 million in
17 sales that were reflected in the transaction data on Silk Road,
18 right?

19 A. That's correct.

20 Q. Did you perform any analysis of what portion of those sales
21 came from the sale of illegal drugs?

22 A. Yes, I did.

23 Q. Would you please flip to what's been marked in your binder
24 as Government Exhibit 940A, please.

25 A. Okay.

F22gulb5

Shaw - direct

1 Q. And what is this?

2 A. It's a breakdown of total categorized Silk Road sales.

3 Q. Did you participate in the creation of this exhibit?

4 A. Yes, I did.

5 Q. Does this exhibit fairly and accurately summarize
6 transaction data from the Silk Road databases?

7 A. Yes, it does.

8 MR. HOWARD: The government offers Government
9 Exhibit 940A.

10 MR. DRATEL: Objection with respect to foundation and
11 in terms of hearsay, your Honor, and Vayner.

12 THE COURT: Why don't you lay more of a foundation for
13 what's categorized under what you've described as drugs.

14 Q. Mr. Shaw, what listings from the Silk Road database did you
15 group under the drug category?

16 A. I grouped under the drug category using the categories from
17 the database anything that fell under the drugs parent
18 groupings, so anything from there and below, and in addition
19 pharmaceuticals.

20 Q. So in other words, you looked at the transactional data for
21 everything for drugs and all the subcategories for drugs,
22 correct?

23 A. Correct.

24 Q. And this chart also shows nondrug sales. What are those?

25 A. That would be everything else that had an associated

F22gulb5

Shaw - direct

1 category, so anything -- any category that wasn't under the
2 drugs category or pharmaceuticals.

3 Q. When we were looking at this chart, there was a category
4 called "null," which I believe you testified included
5 transactions which you were not able to categorize based on the
6 information in the database, correct?

7 A. Right.

8 Q. Are those sales factored into this analysis?

9 A. No, they are not.

10 Q. So this is an analysis of only transactional data for which
11 the database reflected a certain category for the item?

12 A. Correct.

13 MR. HOWARD: The government offers Government
14 Exhibit 940A.

15 THE COURT: Let me ask about the pharmaceuticals.

16 Do the pharmaceuticals include any equipment or other
17 nondrug items?

18 THE WITNESS: I believe there are separate categories
19 for equipment but off the top of my head, I'm not sure. I
20 could look at some of the categories.

21 THE COURT: Do you have information there that would
22 tell?

23 THE WITNESS: Going back to the previous chart.

24 THE COURT: All right. What I'm trying to determine
25 is when you used the word "drugs," are we talking about things

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Shaw - direct

1 which are narcotics of some form, whether they be in the
2 pharmaceutical form or in a nonpharmaceutical form, or does it
3 also include things like surgical gloves or something of that
4 nature that might be considered a pharmaceutical?

5 THE WITNESS: So there was a category described as
6 pharmaceuticals and its parent category was electronics and
7 other subcategories under electronics was medical supplies and
8 medical equipment, those were not included in this factor. So
9 it was only items that were listed as pharmaceuticals in the
10 category pharmaceuticals.

11 THE COURT: Thank you.

12 Government Exhibit 940A is received.

13 (Government's Exhibit 940A received in evidence)

14 Q. Mr. Shaw, can you please describe what is depicted here in
15 this chart.

16 A. Sure. What we're seeing here is the sum of all of the
17 categories that were categorized under either drugs or that
18 category pharmaceuticals are depicted in blue. Any other
19 transactions that were categorized are depicted in red, which
20 takes up four percent of the chart.

21 Q. So the drugs -- the total drug sales based on this analysis
22 was approximately \$182 million, correct?

23 A. That is correct.

24 Q. And how about the other sales, the nondrug sales?

25 A. That amounted to about \$8.5 million.

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Shaw - direct

1 Q. Can you please flip in your binder to what's been marked
2 for identification purposes as Government Exhibit 940B.

3 A. Okay.

4 Q. Do you recognize what this is?

5 A. Yes, I do.

6 Q. And, what this?

7 A. It's a summary of sales transaction for fake IDs, forgeries
8 and passports.

9 Q. And where did you get this information from for the sale of
10 these three kinds of products?

11 A. From the database on the Marketplace.

12 Q. And how did you identify which categories would fit in
13 here?

14 A. This is based on information in the database on the
15 assigned category for those items.

16 Q. Did you participate in the creation of this exhibit?

17 A. Yes, I did.

18 Q. Does this exhibit fairly and accurately summarize the data
19 from the Silk Road databases?

20 A. Yes, it does.

21 MR. HOWARD: The government offers Government
22 Exhibit 940B as in boy.

23 MR. DRATEL: Same objection as to foundation, hearsay
24 and Vayner.

25 THE COURT: Those objections are overruled and

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Shaw - direct

1 Government Exhibit 940B is received.

2 (Government's Exhibit 940B received in evidence)

3 Q. Mr. Shaw, can you please describe what is depicted in this
4 chart.

5 A. Sure. There were three categories that were all related.
6 There was the fake IDs category, it had a total number of sales
7 of 3,642, a recorded sales revenue in U.S. dollars was
8 \$699,053. The category of forgeries, there were 3,487 total
9 transactions for a sales revenue of 192,291 -- sorry \$197,291.
10 In the passports category, there were 103 sales for a total of
11 105,292 U.S. dollars. The total for all three of these
12 categories was 7,232 transactions for a total of over a million
13 dollars.

14 Q. Now, Mr. Shaw, could you please flip in your binder to
15 what's been marked for identification purposes as Government
16 Exhibit 940C.

17 A. Okay.

18 Q. Do you recognize what this is?

19 A. Yes, I do.

20 Q. And what is this?

21 A. It's a summary of information on transactions for
22 money-related categories.

23 Q. And how did you select which categories would be included
24 in this chart?

25 A. These all came from categories that were assigned in the

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Shaw - direct

1 database.

2 Q. And did you participate in the creation of this exhibit?

3 A. Yes, I did.

4 Q. Does this exhibit fairly and accurately reflect transaction
5 data from the Silk Road databases?

6 A. Yes, it does.

7 MR. HOWARD: The government offers Government
8 Exhibit 940C.

9 MR. DRATEL: Same objection.

10 THE COURT: The objections are overruled.

11 Government Exhibit 940C is received.

12 (Government's Exhibit 940C received in evidence)

13 Q. So Mr. Shaw, can you please describe what is depicted in
14 this chart.

15 A. Sure. It's a breakdown of the different money-related
16 categories. The first row for items categorized as money.
17 There were 14,345 total sales for a recorded revenue of
18 2,846,025 U.S. dollars. And you can see similar numbers for
19 digital currencies, gold, bullion and silver. The total for
20 all these categories was 32,820 transactions for a total sales
21 revenue recorded in the database of 3,273,833 U.S. dollars.

22 Q. Now, Mr. Shaw, can you please flip in your binder to what's
23 been marked for identification purposes as Government
24 Exhibit 940E.

25 A. Okay.

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Shaw - direct

1 Q. Do you recognize what this is?

2 A. Yes, I do.

3 Q. What is this?

4 A. It's a summary of information for selected drug categories.

5 Q. And which drug categories are those?

6 A. Heroin, cocaine, methamphetamine and LSD.

7 Q. Where did you draw the data that is included in this chart
8 from?

9 A. This is the database from the Silk Road Marketplace.

10 Q. Did you participate in the creation of this exhibit?

11 A. Yes, I did.

12 Q. Does the exhibit fairly and accurately summarize data from
13 the Silk Road Marketplace databases?

14 A. Yes, it does.

15 MR. HOWARD: The government offers Government
16 Exhibit 940E.

17 THE COURT: My 940E is empty. I do have a 940H which
18 is, I take it, similar but not the same.

19 MR. HOWARD: That is correct. Let me see if we have
20 an extra copy.

21 THE COURT: I can look for a moment on with the
22 witness. Hold on. All right. 940E is different from 940H.

23 Mr. Dratel.

24 MR. DRATEL: The same objection, your Honor.

25 THE COURT: 940E is received over objection.

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Shaw - direct

(Government's Exhibit 940E received in evidence)

Q. Mr. Shaw, can you please describe what is depicted in this chart?

A. Sure. This is a total number of sales that fell under the heroin category and its subcategories -- well, for heroin, cocaine, methamphetamine and LSD. Recorded in the database were over 53,000 transactions for heroin products for a total sales revenue of over \$8.9 million.

In the cocaine categories there were 82,582 total transactions for a total sales revenue of \$17,386,917.

In the category of meth, there were 34,689 transactions for a total sales revenue recorded at 8,110,453 U.S. dollars.

In the category of LSD, there were 54,567 transactions for a recorded value in U.S. dollars of 7,073,838 U.S. dollars.

Q. Now, Mr. Shaw, could you please flip to what's been marked in your binder for identification purposes as Government Exhibit 940H.

A. Okay.

Q. Do you recognize what that is?

A. Yes, I do.

Q. What is this?

A. It's a calculation of total drugs sold at average transaction prices.

Q. And how did you determine the average transaction price?

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Shaw - direct

1 A. I selected 100 items at random and read through the
2 description of those items to determine the weight for those
3 items. And from there, I was able to calculate the price per
4 weight for those items if there was a description of the
5 weight. Taking the items that had a good weight description
6 and then averaging the price per weight together, I was able to
7 come up with an average price per weight.

8 Q. And these 100 transactions were taken at random from the
9 Silk Road database?

10 A. That's correct.

11 Q. Are these for the same four drugs that we reviewed on the
12 prior chart?

13 A. Yes.

14 Q. Did you participate in the creation of this exhibit?

15 A. Yes, I did.

16 Q. Does this exhibit fairly and accurately reflect or
17 summarize data from the Silk Road Marketplace databases?

18 A. Yes, it does.

19 MR. HOWARD: The government offers Government
20 Exhibit 940H.

21 MR. DRATEL: Objection as to 401, 403, hearsay and
22 Vayner.

23 THE COURT: All right. Let me ask a question,
24 Mr. Shaw.

25 I see that the total -- let me ask you: Were you

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Shaw - direct

1 extrapolating based upon your sample of 100 that the
2 transaction price was approximately the same for all other
3 transactions of the, for instance, the 53,649 transactions for
4 heroin?

5 THE WITNESS: That is correct.

6 THE COURT: Did you do anything to ensure that your
7 distribution over time was a distribution which appropriately
8 weighted the various time periods?

9 THE WITNESS: I didn't do any weighting based on time
10 periods no, but it was a distribution over time.

11 THE COURT: Did you do anything to ensure that, for
12 instance, you were receiving the same number of transactions
13 from each of the time periods that spanned the entire database?

14 THE WITNESS: No. The items were selected at random
15 based -- in the database, there is a column that is considered
16 random, and it was based on selecting items based on that
17 randomized number, so it was purely random.

18 THE COURT: 940E cannot be received -- I'm sorry --
19 940H cannot be received on this basis.

20 Let me ask you also, do you have any degree in
21 statistical analysis?

22 THE WITNESS: I do not.

23 THE COURT: It can't be received on this basis.

24 You may proceed.

25 Q. Earlier you discussed the fact that the Silk Road databases

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Shaw - direct

1 included information about Silk Road users, correct?

2 A. That is correct.

3 Q. What kind of -- what, if any, information did the Silk Road
4 database include about the location of users?

5 A. Users were able to self-identify their country, where they
6 were.

7 Q. Can you please flip in your binder to what's been marked
8 for identification purposes as Government Exhibit 940F.

9 A. Okay.

10 THE COURT: Maybe somebody could give me 940F also.
11 Thank you.

12 Q. Do you recognize this exhibit, Mr. Shaw?

13 A. Yes, I do.

14 Q. What is this?

15 A. This is a map representing countries that had ten or more
16 self-identified vendors.

17 Q. Did you participate in the creation of this exhibit?

18 A. Yes, I did.

19 Q. Where did the data for this exhibit come from?

20 A. From the Silk Road Marketplace.

21 Q. Does it fairly and accurately summarize information from
22 that database?

23 A. Yes, it does.

24 MR. HOWARD: The government offers Government
25 Exhibit 940F.

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Shaw - direct

1 MR. DRATEL: Hearsay and *Vayner*.

2 THE COURT: Hold on one second. Government
3 Exhibit 940F is received. The objections are overruled.

4 (Government's Exhibit 940F received in evidence)

5 Q. Mr. Shaw, can you please describe what is depicted in this
6 chart.

7 A. Sure. Using the information from the database where users
8 identified what country they came from, I checked to see all of
9 the ones that participated in selling items on the Marketplace
10 and those that did, if that country had ten or more confirmed
11 vendors, then they're listed in green on this chart.

12 Q. Can you please flip to what's been marked as Government
13 Exhibit 940G, please.

14 A. Okay.

15 Q. Do you recognize what this is?

16 A. Yes, I do.

17 Q. And what is this?

18 A. This is a map representing countries that had 100 or more
19 buyers.

20 Q. And where did this data come from?

21 A. From the database from the Silk Road Marketplace.

22 Q. Does this fairly and accurately summarize the data from the
23 Silk Road Marketplace databases?

24 A. Yes, it does.

25 MR. HOWARD: The government offers Government

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Shaw - direct

1 Exhibit 940G.

2 MR. DRATEL: Objection. Hearsay, Vayner.

3 THE COURT: All right. Those objections are
4 overruled.

5 Government Exhibit 940G is received.

6 (Government's Exhibit 940G received in evidence)

7 Q. Mr. Shaw, can you please describe what is depicted here.

8 A. Yes. This is a world map. We took the information from
9 the database and for each user that self-identified a country,
10 if they participated in purchasing an item on the Marketplace
11 that is calculated by country and if the total number for that
12 country exceeded 100 buyers, they're listed in red on this
13 chart.

14 Q. Mr. Shaw, can you please flip to what's been marked in your
15 binder for identification purposes as Government Exhibit 940D
16 as in dog.

17 A. Okay.

18 Q. Do you recognize this exhibit?

19 A. Yes, I do.

20 Q. And what is this?

21 A. It's a summary of transactions from the Marketplace.

22 Q. Where did the data from this exhibit come?

23 A. It came from the database from the Silk Road Marketplace.

24 Q. Does it fairly and accurately summarize the data from the
25 Silk Road Marketplace databases?

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Shaw - direct

1 A. Yes, it does.

2 Q. Did you participate in the creation of this exhibit?

3 A. Yes, I did.

4 MR. HOWARD: The government offers Exhibit 940D.

5 MR. DRATEL: Hearsay and Vayner objections.

6 THE COURT: 940D?

7 MR. HOWARD: That's correct.

8 THE COURT: The objections are overruled. Government
9 Exhibit 940D is received.

10 (Government's Exhibit 940D received in evidence)

11 Q. So Mr. Shaw, can you please describe what's in this chart.

12 A. Yes. So what we have here is the total numbers taken from
13 the database for transactions. The total number of
14 transactions that were recorded in the database were 1,530,252.
15 The total number of buyer accounts that participated in
16 purchasing items on the Silk Road Marketplace was 115,391 user
17 accounts. The number of seller accounts that participated in
18 the Marketplace, there were 3,748 user accounts that sold items
19 on the Marketplace.

20 The recorded value for the total sales revenue in
21 bitcoins was 9,912,070 bitcoins. The U.S. dollar equivalent
22 recorded in the database of these transactions was
23 213,000 -- sorry -- 213,888,103 U.S. dollars. The total
24 commissions recorded in bitcoins was 642,455 bitcoins. The
25 recorded U.S. dollar equivalent for these commissions was

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Shaw - direct

1 13,174,896 U.S. dollars.

2 MR. HOWARD: May I have a moment with cocounsel,
3 please.

4 THE COURT: Yes.

5 MR. HOWARD: We're done with the witness but we would
6 like to have a side bar first about one issue before we let
7 Mr. Dratel cross him.

8 THE COURT: All right. Let's have a brief side bar.

9 (Continued on next page)

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Shaw - direct

1 (At the side bar)

2 MR. TURNER: So in terms of the admissibility of the
3 drug weight evidence, I don't think the issue is admissibility
4 but weight.

5 THE COURT: No. It's admissibility. I'll tell you
6 why, because what you've done is you've extrapolated from a
7 total number of sales.

8 MR. TURNER: Right.

9 THE COURT: And the transaction price, the average
10 weight, these two numbers, the transaction price and the weight
11 are derivative numbers based upon a sample of 100 that this
12 witness may not be competent to have drawn.

13 He did not do a statistical analysis to determine
14 whether or not that's an appropriate one. Clearly, the
15 information in the record is sufficient to add up all of the
16 transaction prices and all of the total weights added to the
17 math so to do 100.

18 You're trying to get it in for -- as if it is a
19 one-to-one-to-one. I don't think you've got a proper
20 foundation for this document.

21 MR. TURNER: You can't add up all the weights because
22 the weights aren't consistently included in the offerings.
23 There are only some offerings that describe the weight.

24 THE COURT: Then you can add up all the transaction
25 prices, but there are fluctuations. There are market

F22gulb5

Shaw - direct

1 fluctuations. And depending upon where the drugs are being
2 sold to, for all I know, there could be differences in time as
3 to where they're going. So 100 random without understanding
4 the market impact seems to me to be --

5 MR. TURNER: There is another exhibit we'd like to
6 rely on instead which doesn't go into the average transaction
7 price but the highest.

8 THE COURT: I don't know what that is, but if you want
9 to try with this witness on something different, you can try
10 before you end.

11 MR. TURNER: It's the absolute highest.

12 THE COURT: I don't know. Walk him through it.

13 Mr. Dratel.

14 MR. DRATEL: So it's not about this document, it's a
15 separate set of questions.

16 THE COURT: That's fine.

17 MR. DRATEL: While we're up here in terms of cross, I
18 did intend to ask him to authenticate Defense E but the Court
19 has precluded it; rather than go through the -- I figured I'd
20 mention that now so -- just that I would have -- because he had
21 access to all the material and he has gone through it.

22 THE COURT: It's not an authentication issue.

23 MR. DRATEL: No. I understand.

24 THE COURT: It's a relevance issue.

25 MR. DRATEL: I'm saying, I would have done that if the

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Shaw - direct

1 Court had permitted the document.

2 THE COURT: I understand. That's your proffer?

3 MR. DRATEL: Yes.

4 THE COURT: But in light of the Court's ruling, you
5 won't do it because of the Court's rule.

6 MR. DRATEL: Right. I'm saying rather than interrupt
7 the cross.

8 THE COURT: It's on the record. I understand.

9 So you folks, the government can proceed how it wants
10 to proceed and we'll take it one step at a time.

11 (Continued on next page)

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Shaw - direct

1 (In open court; jury present)

2 BY MR. HOWARD:

3 Q. Mr. Shaw, please look to 940I in your binder, please.

4 A. Okay.

5 Q. Do you recognize what this is?

6 A. Yes, I do.

7 Q. And what is this?

8 A. This is a weight estimate for four different categories of
9 drugs based on a high selling price.

10 Q. Can you describe what you mean by high price?

11 A. I can. I selected 100 items from the database and manually
12 reviewed them and calculated a price per weight for each those
13 items. I then selected the highest price per weight for those
14 items out of that list of 100 items and by using that, came up
15 with what I considered a conservative estimate for the highest
16 price per weight.

17 And by using that high price per weight using the
18 formula of taking the total sales value in U.S. dollars
19 dividing by this high price per weight, it results in a weight
20 estimate, a conservative weight estimate.

21 Q. Can you explain why you believe that to be conservative?

22 A. Because by dividing by a larger number, you're going to end
23 up with a smaller number in weight.

24 Q. And earlier you testified that you also looked at the
25 average price of these same 100 transactions, correct?

F22gulb5

Shaw - direct

1 A. Correct.

2 Q. How do the high prices compare to the average prices?

3 A. They were significantly higher -- multiple, two or three
4 sometimes four times.

5 Q. So this analysis assumes that each sale of drug occurred at
6 the most expensive price you found in your random sample,
7 correct?

8 A. That is correct.

9 Q. Did you participate in the creation of this exhibit?

10 A. Yes, I did.

11 Q. Does it fairly and accurately represent information that you
12 extracted from the Silk Road Marketplace databases?

13 A. Yes, it does.

14 MR. HOWARD: The government offers 940I.

15 MR. DRATEL: I object based on 100 transactions.

16 There's no statistical value to it.

17 THE COURT: Let me ask a few questions so that I
18 understand what you did.

19 You took 100 transactions randomly; is that right?

20 THE WITNESS: 100 items randomly that were used in
21 transactions; yes.

22 THE COURT: 100 items?

23 THE WITNESS: 100 transactions.

24 THE COURT: Which included a heroin sale?

25 THE WITNESS: Correct.

F22gulb5

Shaw - direct

1 THE COURT: Based upon those 100, you determined
2 manually what the highest transaction price was for any one of
3 those 100; is that right?

4 THE WITNESS: I determined --

5 THE COURT: You took the hundred.

6 THE WITNESS: I took the hundred.

7 THE COURT: And if the highest price was \$739 and
8 change, that's the price you used for the heroin analysis, is
9 that right?

10 THE WITNESS: Correct.

11 THE COURT: And then what you did was, you took the
12 total sales revenue and you did some math to come up with the
13 possibility of what the number of -- the volume of drugs, is
14 that right?

15 THE WITNESS: Correct.

16 THE COURT: All right. It's not received. We're
17 going to -- we'll have to talk about it again. It's not
18 received based upon this analysis.

19 Is there anything else that government wanted to do?

20 MR. HOWARD: No, your Honor.

21 THE COURT: Why don't we do this. If you want, I
22 don't want to have the jury have to sit around for this, we can
23 talk about this further. I don't want to talk about the
24 evidentiary issue in front of the jury, but I can explain my
25 basis a little more fully, but I think we need to excuse the

F22gulb5

Shaw - direct

1 jury for that, all right. Unless you folks are ready to move
2 on in light of the rulings but I assume based on the side bar
3 you'd like to take this up?

4 MR. HOWARD: Yes.

5 THE COURT: Ladies and gentlemen of the jury, I'm
6 sorry for the quick break, but we're right at the end of this
7 witness, so I need to resolve this before we go on.

8 Let's take this break a little early. We'll see how
9 things go. Hopefully it will be about ten to 15 minutes. I
10 appreciate your patience with us.

11 Thank you. Don't talk to each other about this case.

12 (Continued on next page)

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Shaw - direct

1 (In open court; jury not present)

2 THE COURT: I'm going to ask you, Mr. Shaw, to step
3 down, but stay close because we may have some additional
4 questions for you, all right?

5 THE WITNESS: Yes.

6 (Witness temporarily excused)

7 THE COURT: I've asked Mr. Shaw to take a break but to
8 stay close in case we have any additional questions for him on
9 what underlies his analysis. Let's all be seated.

10 And let me describe a little bit more fully the
11 Court's view, all right, since I can do that better when we're
12 not at side bar.

13 We all I think understand the importance of this
14 document. There are two ways in which such a document can be
15 used: One is for the jury to answer each of the three
16 questions in connection or four questions in connection with
17 their determination if they reach past the first question on
18 Counts One, Two and Three. The second is if there was a
19 conviction, it would be highly relevant to sentencing.

20 The issues for sentencing are different, the Court has
21 a different standard. It's preponderance of the evidence.
22 We're not anywhere near there, so I'm going to put those to the
23 side for the moment and deal with the evidentiary value and
24 importance of these in terms of the elements of the causes of
25 action that are in Counts One, Two and Three.

F22gulb5

Shaw - direct

1 The concern that I have is with, let's just take 940I,
2 which was the more-recently offered document, for that we don't
3 in fact know whether 739 was the highest possible weight. His
4 analysis assumes that he took -- or the value -- that he took
5 the highest possible value. Now, it would have been relatively
6 easy for him to have done a sort and to have come up with on a
7 database in fact what the highest possible value was.

8 Is that not true?

9 MR. TURNER: No, your Honor. That's not true. The
10 system recorded the price.

11 THE COURT: Right.

12 MR. TURNER: But the weight would just be an attached
13 description --

14 THE COURT: Not the weight. I'm talking about, as I
15 understand it, the weight is derived by this witness from the
16 overall denominator and the numerator is the price obtained
17 from the random 100 transactions, which in Exhibit I happens to
18 be the highest dollar value attributed in those 100.

19 MR. HOWARD: Let me address that. You couldn't do
20 just a standard sort because the database does not capture for
21 each item what the price is per weight. There's a price
22 value and then --

23 THE COURT: Let's forget about that. What I'm trying
24 to figure out is, if you wanted to come up with an analysis
25 like the one you've done, and I'm not saying it's not possible

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Shaw - direct

1 to have them done, you need the figure out before you say that
2 out of 100 random, okay, first of all, to do 100 random, you
3 know somebody who knows about statistics, and who knows how to
4 derive what random is and whether random was within the
5 relevant time frame, what random means. And there are a
6 variety of ways in which random is understood in the world of
7 statistics, so that's number one. So picking 100 random is an
8 issue.

9 The second piece is, it is nonetheless possible to
10 come up with the highest transaction price for heroin, but
11 you've got to do that -- to extrapolate that to the entire
12 array of transactions, whatever thousands of heroin
13 transactions there are, if you were going to do it with a
14 statistician, you'd need to do it through some form of figuring
15 out if that number is right. In other words, 739 could in fact
16 be the highest price or it might not be. And if it's not, then
17 it would be, I suppose, understating would be the argument, it
18 would be understating the number of kilos, right? Because
19 you'd have fewer kilos reflected in a higher price. If you had
20 a thousand dollars per kilo, your number per kilo would go down
21 to, say, ten kilos. If you had \$1,200, it would go down again.
22 So the problem I have is the statistical piece, which I don't
23 think this witness is competent to do.

24 There is a manual version of this which could be done
25 but hasn't been done. So that's the issue I have, because I

F22gulb5

Shaw - direct

1 have no idea if he's got the right number or not frankly and
2 it's an extraordinarily important derivation that he's doing
3 here.

4 MR. HOWARD: One point is, first of all, I think he
5 did testify that he used the database functions to derive the
6 random selections, the random selection of heroin transaction.
7 So he wasn't --

8 THE COURT: But not in a statistical way. What he did
9 was sort of like randomize, right? I have no idea if the
10 algorithm that he used to randomize spit out random.

11 For this kind of situation, what you would want in
12 order to get a good price point is you would need to control
13 for geography, time frame, because you might sell it at one
14 price in India and a different price in Timbuktu and a
15 different price on the streets of New York. And you folks have
16 put in now maps showing that kind of global footprint.

17 So I don't have any idea whether or not in his random
18 sampling he got a truly random sampling for all geographies.
19 In other words, you could take 2013, pick each geography,
20 average those prices together, come up with one random sample
21 per geography, go to another time frame, take all the relevant
22 geographies on a date certain, average them, but that's not
23 what was done.

24 MR. HOWARD: I think one of the issues here is with
25 the difficulty of what the data is and the data for each

F22gulb5

Shaw - direct

1 transaction as I mentioned doesn't calculate a price per weight
2 in and of itself. It required manual review of the hundred
3 that were selected to make that calculation for each one
4 individually.

5 Also, in terms of the geography, as Mr. Shaw
6 testified, that only appeared in the database where a user
7 elects to provide that information, and there's no verification
8 of that. So, our ability to do that analysis based on
9 geography is limited by -- it would be highly inaccurate
10 because it would involve a much smaller sample size and also
11 involve users that may or may not be telling the truth about
12 where they're from.

13 THE COURT: The deficiency in the data does not allow
14 us then to assume that the data we do have is the right data;
15 it just means that perhaps the exercise can't be done.

16 Now, it may be that the government, and I don't know,
17 has in evidence the whole list of transactions because that's
18 part of what this fellow has authenticated, and you can go
19 through and for those where you've got actual weights, since
20 it's in evidence, you can manually add up enough to get you
21 where you want to go. That's different. But I don't think
22 this document can come in on this basis.

23 Let me ask Mr. Dratel if you have any other view or do
24 you want to add anything?

25 MR. DRATEL: No. I think the deficiencies in the

F22gulb5

Shaw - direct

1 database don't allow us to manipulate data in a way that is not
2 statistically valid and there's no statistical accuracy in this
3 whatsoever. It's really not a statistic at all. The other
4 thing is, to the extent that the government now says self-ID is
5 not verified, that would be exactly my point to the objection
6 to the maps because you can't have it for one thing to be used
7 in evidence and then try to undermine it for purposes of
8 getting in this other chart.

9 THE COURT: I think that the point, as I understood
10 it, was that there's not self-ID for everybody, but where there
11 was self-ID, that that's what's reflected on the map.

12 Am I wrong about that, or is the map somehow itself
13 deficient?

14 MR. HOWARD: No. And I believe the witness of the
15 witness is he testified about what it actually was. These are
16 the users who have self-reported. That's what that map
17 captured.

18 MR. DRATEL: What I'm saying is the government also
19 said there's no verification, which is the point with respect
20 to those maps. It's just someone's self-ID. It really has no
21 value as true.

22 THE COURT: On the basis that you folks have
23 proffered, this is not the witness to get this document in.

24 MR. TURNER: Your Honor, we have the testimony in the
25 record and we would just ask for an opportunity to brief this

F22gulb5

Shaw - direct

1 tonight and ask your Honor to reserve judgment. Our opinion is
2 this goes to weight, not admissibility. This is an extremely
3 conservative estimate. You have a random sample of 100 heroin
4 transactions. He's taken the absolute highest price.

5 THE COURT: He's taken the highest price of the 100.

6 MR. TURNER: Right. What he did is, he went --

7 THE COURT: What if he's wrong? What if the highest
8 price is \$1,200?

9 MR. TURNER: So what he did is, he took these 100
10 heroin transactions and then he looked at -- each one has the
11 weight of the product being sold and he looked at the price per
12 weight. So what he did was for those 100, he said here is the
13 highest possible price per weight that's being charged for
14 these heroin transactions.

15 THE COURT: What he could have done is he could have
16 done a chart that had only those 100 on it. And it could have
17 been those 100 had the total price per transactions of X and
18 here is the weight attributable to it. Maybe it would have
19 been 700 grams. I have no idea. But that's one exercise. But
20 that's a different exercise.

21 What happens, though, mathematically if it is \$1,200
22 as opposed to 700? Am I right that it would mean that the
23 number of kilos decreases?

24 MR. TURNER: I'm just not sure what your Honor means,
25 if you're right. If you're talking about a sample of a

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Shaw - direct

1 hundred --

2 THE COURT: Let's take a sample of 101. The one that
3 gets added in, let's assume is from Timbuktu where they're able
4 to sell heroin at \$1,200 --

5 MR. TURNER: On that point, there's no geography in
6 terms of --

7 THE COURT: I understand.

8 MR. TURNER: In Silk Road, there's one price for
9 everybody. It's not like you buy from Timbuktu -- and you get
10 one price.

11 THE COURT: I have no idea. There were some things
12 which said ships out of X, so it may ship out of, for all I
13 know, ship out of wherever.

14 Let's put it this way: What if somebody who is
15 desperate for money sells it at \$1,200 for their price point.
16 Am I correct that using this methodology, had that been used,
17 that would decrease the number of kilos?

18 MR. TURNER: Yes, but this is why we were arguing it
19 goes to weight. For example, if somebody offers it for
20 1200 --

21 THE COURT: It can't go to weight if you're offering
22 it for the fact that there were 12 kilos. That's not weight.
23 That is a mathematical factual calculation.

24 MR. TURNER: It goes to weight in that the jury has
25 received an explanation as to what this is. What it is is the

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Shaw - direct

1 witness took a sample size of 100 and they saw that this is the
2 highest price in that sample and that this is an extrapolation
3 in that sample.

4 If the defense wants to say, well, there could be a
5 larger sample you could have taken that could have yielded a
6 different result, that goes to weight. It still makes it more
7 relevant -- it still makes a fact more probable than it
8 otherwise would be. It clears the 401 bar.

9 THE COURT: It's not a relevance issue. It's a
10 foundation issue.

11 MR. TURNER: In terms of foundation, the witness has
12 fully explained how he arrived at this figure.

13 THE COURT: Let's do this: I really feel like this is
14 one where there's not enough, but you can always put in
15 something else. Right now, my ruling is going to be what my
16 ruling is. And if people want to put in letters that sort of
17 go into it again, so be it.

18 MR. DRATEL: I'm going to be preparing for summation
19 tonight. The Court has ruled this is clear, this is not
20 statistics what they're putting in. It's not statistics. It
21 is cherry picking. That's all it is. It has no value to
22 \$8 million worth of transactions. The Court knows. The Court
23 is agreeing, so let's just move on with it. We can't keep
24 these things open all the time.

25 THE COURT: I hear you. The evidentiary record, if

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Shaw - direct

1 it's open, it will be open. I take letters on a variety of
2 topics, but I'm not going to preclude -- I'm not going to
3 change my ruling right now, so if the government gets this in,
4 they're going to have to call the witness back because
5 Mr. Dratel would then be able to cross-examine him on the
6 content of a document that I'm not allowing in right now, so
7 there would be that. So that's how we're going to proceed on
8 this.

9 MR. TURNER: If I can make one more attempt. The one
10 point is if you take the highest price in this sample, you get
11 a weight estimate that is way, way beyond what's required for
12 the (b)(1)(A) weights, which makes it even -- again --

13 THE COURT: Presumably the government has in evidence
14 all this data underlying this.

15 MR. TURNER: No, your Honor. The actual underlying
16 data is the categories and then the amounts of money that came
17 in associated with this category. So you're going to have
18 black tar heroin, brown heroin and then a money figure. The
19 only way you get to the weight is by going line by line through
20 the data, which you're going to have millions and millions of
21 screens for that. That's why you have to have a sample of some
22 sort.

23 THE COURT: I agree, but it seems like the kind of
24 thing that you should have had a statistical expert do, not
25 this fellow who is like a computer guy. I hear what you're

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Shaw - direct

1 saying, which is, you were facing a difficulty in proof, but
2 you have to understand, this is such an important point that
3 unless all of the I's are dotted and T's are crossed, I am very
4 hesitant to let this in.

5 MR. TURNER: I understand. We would like an
6 opportunity to brief the issue.

7 THE COURT: If the evidentiary record is still open,
8 I'll look at any issues, but as I said, the government would
9 have to be prepared to bring this fellow back because right
10 now, he's not going to be allowed to be cross-examined on this
11 document.

12 MR. TURNER: Thank you.

13 MR. DRATEL: I object to letting them bring him back.
14 I think it should be closed. This is done. We're putting on
15 our case.

16 THE COURT: No. I ruled right now. It would have to
17 be a change of ruling, which has happened in the past. All
18 right.

19 Is there anything else?

20 MR. DRATEL: The 403 aspect of it is also very
21 important.

22 THE COURT: The 403 aspect of it I think actually goes
23 the other way. The 403 aspect of it I believe that it's not --
24 in terms of its probative value?

25 MR. DRATEL: No. It's confusing. There's nothing

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Shaw - direct

1 statistical about it.

2 THE COURT: If you want to go to that, confusing,
3 that's a weight issue. Then Mr. Turner is -- once we're into
4 403 --

5 MR. DRATEL: It's confusing. I mean, I'm just adding
6 to what has already been determined about its admissibility but
7 I'm just saying also it's not statistics. It's made up.

8 THE COURT: I think we're now preaching to the
9 converted. The government will brief if it wants to. Let's
10 take as short a break as we can reasonably make it and then
11 we'll come back.

12 THE DEPUTY CLERK: All rise.

13 (Recess)

14 (Continued on next page)

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F225ulb4

Shaw - direct

1 (Witness not present)

2 THE COURT: So, I was looking at a few cases, I have
3 only looked at a couple, and then I spoke to three
4 colleagues -- Judges here -- and I believe that the proper way
5 to proceed, looking at the cases, is as follows. This is now
6 on 940D and I, which is the following:

7 In order for there to be a foundation laid the program
8 would have to be talked about that was used o create the random
9 sample, that all the heroin transactions and the other
10 transactions need to be in so the jury could replicate, if they
11 wanted to, manually, the exercise. And so, since the
12 underlying data is in, the pages will have to be printed out
13 for that to occur or something else. And then the documents
14 can come in subject to cross-examination and I need to look at
15 things much more closely overnight and it is possible that this
16 could be struck. And so, we would go into it with our eyes
17 open.

18 I believe that striking it is a relatively discrete
19 piece and it would relate to these documents themselves, but
20 that that would be the way to proceed and that seems to be the
21 unanimous view of others and the Second Circuit in terms of
22 methodology and it going to reliability of analyses.

23 MR. TURNER: Your Honor, I'm sorry. What would need
24 to be struck?

25 THE COURT: Because I have to look at this more

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Shaw - direct

1 closely.

2 MR. TURNER: If we were to offer the testimony now?

3 THE COURT: You are going to offer it now.

4 MR. TURNER: I see.

5 THE COURT: Mr. Dratel is going to cross-examine it
6 now and then I may strike it after we do further examination on
7 this.

8 MR. HOWARD: I have one question. When you are
9 referring to underlying data do you mean all the data for the
10 transaction tables overall or transactions that occurred?

11 THE COURT: Whichever ones you have in here for
12 heroin, cocaine, methamphetamine and LSD.

13 MR. HOWARD: We do have spreadsheets that are quite
14 voluminous so we would offer it under 1006 as a summary
15 exhibit. That has been produced, the underlying data to
16 defense in discovery.

17 THE COURT: I think you have to produce the underlying
18 data so that the jury can redo the exercise itself, if it wants
19 to.

20 MR. HOWARD: If you give us a minute we can burn the
21 spreadsheets to a disk that can be authenticated by the witness
22 but I would just need to do it with the witness.

23 THE COURT: Look. I know you folks have not had the
24 time that I have had to look at this. This is the kind of
25 thing that I really wished I had been able to look at before

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Shaw - direct

1 being confronted with it just now but perhaps you folks thought
2 it was really straightforward. I don't think it is really
3 straightforward given the testimony of this witness on this
4 issue.

5 Mr. Dratel?

6 MR. DRATEL: A couple things.

7 One is that I don't think they should be given any
8 time to do anything. I think we should move forward and
9 they've had plenty of time to get this stuff together. This is
10 transparent in the sense that this is not a valid statistical
11 analysis. It is not statistics, period.

12 But, the other thing is that I don't think it works --
13 it is something that the government claims is so important and
14 the Court agrees is very important that the jury should hear it
15 and then it be struck. That's too late. The damage is already
16 done at this stage of the trial on an issue of considerable
17 importance so I don't think that that is the proper way to go
18 about it.

19 The other thing is, and I understand the value of
20 consulting and all of that, but, I mean, the Court ruled. It
21 is not the Court of Appeals that goes to other judges to go
22 overrule. The Court heard the testimony.

23 THE COURT: It is important that I get it.

24 MR. DRATEL: The Court is here.

25 THE COURT: Look. I have consulted on all kinds of

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Shaw - direct

1 issues where people have disagreed with me and I go with what I
2 believe is appropriate, but I do think sometimes when one is
3 pressed for time in dealing with these kinds of issues that it
4 is useful and, indeed, a lot of us call each other. People
5 call me a lot including more senior judges. We utilize the
6 experience and expertise of each other which is, I believe, a
7 useful thing to do. Nevertheless, it is the Second Circuit
8 talking about reliability and talking about methodology as
9 within the ambit of cross-examination, not within the ambit,
10 necessarily, of a foundation. I was characterizing it as a
11 foundational issue. They characterize it as a reliability
12 issue which goes to cross-examination.

13 MR. DRATEL: But the chart is wrong. The chart is
14 wrong. You can't have \$8 million worth of heroin transactions
15 and say it is based on 100. The chart is not accurate. The
16 chart cannot come in as a statement of that. It is not -- it
17 is just not -- it is not it. I can put two numbers together
18 that have no bearing on each other and say you can
19 cross-examine on that. The fact is the chart is not a valid
20 chart.

21 MR. TURNER: Your Honor, I just want to make sure that
22 I am clear on what your Honor is imagining. Are you proposing
23 that the government produce the random sample of 100
24 transactions?

25 THE COURT: I think you have to do that for sure. You

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Shaw - direct

1 have got to produce the random sample of the 100 transactions.
2 You have to explain the program that created that random sample
3 of 100 transactions and you have got to produce the data so
4 that the jury could, itself, if they wanted to, replicate that.
5 I don't know if that is 4,000 pages, 10,000 pages or 2,000
6 pages but that's, I think, what needs to occur.

7 MR. TURNER: When you say the data, you mean beyond
8 the 100?

9 THE COURT: Yes.

10 MR. TURNER: I think that we are just going to forego
11 that. I don't think we need it. And so, I think we are ready
12 to move on.

13 THE COURT: All right. So, we won't then return to
14 this topic so then I think I take it from Mr. Turner's
15 statement that they won't produce that 940D and I will not come
16 into evidence.

17 MR. HOWARD: I think it is I and J -- sorry, H and I.

18 THE COURT: H and I.

19 MR. HOWARD: D was the last exhibit that we showed.

20 THE COURT: So, H and I will remain excluded from
21 evidence based upon the government's lack of desire to put in
22 the underlying data.

23 Let's then get Mr. Shaw Back out here and we will
24 proceed.

25 Joe, you can go ahead and bring out the jury while

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Shaw - direct

1 Mr. Shaw is coming out. That's all right.

2 So, this issue is closed. Done. No briefing
3 tomorrow. We are done with it. Mr. Dratel, we are done with
4 this issue, it is not going to be reopened tomorrow.

5 MR. DRATEL: Great. Thank you, your Honor.

6 (Continued on next page)

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Shaw - direct

1 (Jury present; witness resumes the stand)

2 THE COURT: Ladies and gentlemen, let's be seated.

3 Tomorrow we are going to arrange to have afternoon
4 coffee service for you folks. When I say coffee it will be
5 tea, coffee, water, something like that so you have something
6 to look forward to at this hour in the day.

7 I want to thank you all for your patience. We have
8 Mr. Shaw back on the stand.

9 Mr. Howard, you may proceed.

10 MR. HOWARD: The government has no further questions.

11 THE COURT: Mr. Dratel?

12 CROSS EXAMINATION

13 BY MR. DRATEL:

14 Q. Good afternoon, Mr. Shaw.

15 A. Good afternoon.

16 Q. I want to go back to Government Exhibit 901 which you
17 testified about on Thursday with respect to an SSH key.

18 A. Yes. Okay.

19 Q. And that's in evidence and there were two SSH keys on the
20 Silk Road server, correct?

21 A. Correct.

22 Q. And there was one ending in frosty@frosty and one ending in
23 root@bcw, right?

24 A. Correct.

25 Q. And an SSH key essentially allows someone to have remote

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Shaw - cross

1 administrative access to a computer server?

2 A. Correct.

3 Q. And by administrative access that means total control over
4 the site, right? Through those keys?

5 A. Correct.

6 Q. Not just general administrative access but through these
7 SSH keys, correct?

8 A. Correct. In this case, correct.

9 Q. So, an individual gaining access through those SSH keys
10 would be able to review and change any information in the
11 server, correct?

12 A. The database had its own authentication which would be
13 separate, but otherwise, correct.

14 Q. And anyone getting in through that SSH key would be able to
15 obtain information that's logged within the database or on the
16 server, correct?

17 A. Again, the database had its own authentication, but yes,
18 correct.

19 Q. And that would include they could get login and password
20 information for the Dread Pirate Roberts account, right?

21 A. Depends on which -- what you mean by password information.
22 Passwords are typically stored encrypted.

23 Q. Well, but typically, but do you know?

24 A. I'm sorry?

25 Q. Do you know though, with respect to that? With respect to

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Shaw - cross

1 the server?

2 A. It is the default for the ubuntu which the server was.

3 Q. Do you know?

4 A. And then for the --

5 Q. The question is do you know.

6 A. Can you rephrase your question, please?

7 Q. Sure.

8 You said that typically such information would be
9 encrypted. Do you know for a fact whether that information,
10 DPR's password and login information on the server, was
11 encrypted?

12 A. I have not verified that.

13 Q. Now, so, by the way, with respect to, you had, on
14 Government Exhibit -- the mastermind page for the server,
15 right?

16 A. Yes.

17 Q. And if you log in as Dread Pirate Roberts that
18 automatically comes up, correct?

19 A. No, it does not. It depends which page you come from.
20 There are two login pages.

21 Q. So which login page does it come up on automatically?

22 A. There was a special support admin login page.

23 Q. For the support admin page, right?

24 A. Correct.

25 Q. And you testified Thursday that you used both an MD5 hash

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Shaw - cross

1 value and an SHA 1 -- you call it a SHA 1 or SHA?

2 A. Shah 1.

3 Q. So, MD5 hash and Shah 1 hash value to confirm the copies of
4 the server that you viewed, right?

5 A. Correct.

6 Q. And you did that to ensure that you were looking at the
7 same data that was on the original that you had imaged on a
8 copy?

9 A. Correct.

10 Q. There was a reason -- withdrawn.

11 You used both the MD5 hash and the Shaw 1 hash because
12 you wanted to be thorough and you wanted to be as -- you want
13 to be as reliable as possible, right?

14 A. It was the default setting for the tool that I used so it
15 automatically calculated both for verification.

16 Q. But it calculates both but you matched both, right?

17 A. That's correct.

18 Q. That's not always -- you don't have to match both, you
19 decided to match both, right?

20 A. Yes, I did match both.

21 Q. Not because you wanted to be forensically sound in your
22 analysis, right?

23 A. Sure.

24 Q. That's because MD5 hashes have some vulnerability, correct?

25 A. Depends on the use case.

F225ulb4

Shaw - cross

1 Q. But you use a SHA 1 because that has more reliability,
2 right?

3 A. Again, depends on the use case.

4 Q. But you did it in this case, correct?

5 A. Because it was available to me, yes.

6 Q. Now, going back to Government Exhibit 901 and looking at
7 the key that ends the SSH key which we were just talking
8 about -- let me know when you get there.

9 A. Thanks.

10 Q. Looking at the key that ends in frosty@frosty and you
11 testified Thursday, I think, that the user name frosty and the
12 computer name "frosty" that are found in the SSH key are taken
13 from the system that you are coming from?

14 A. That's correct.

15 Q. Well, the part of the key that contains frosty@frosty is
16 what is called a comment, right?

17 A. I don't know that for sure.

18 Q. Well, you can generate a key ending in frosty@frosty from
19 my computer, right? You can do it at any computer, can't you?

20 A. That is correct.

21 Q. Are you familiar with the program called SSH- -- withdrawn.

22 And you also talked a little bit about on direct on
23 how SSH keys work, right?

24 A. Correct.

25 Q. And you are familiar with how they're generated?

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Shaw - cross

1 A. Yes.

2 Q. And you have a lot of background and training in UNIX and
3 Linux programs, the two computer systems, right?

4 A. I have experience at both, yes.

5 Q. And you are familiar with the manual pages associated with
6 computer programs contained in UNIX-based operating systems
7 like Macrolex or Linux?

8 A. Yes.

9 Q. And these manuals contain documentation for how the
10 software works, right?

11 A. Correct.

12 Q. And they're widely accepted in the community as being
13 reliable authority on how computer programs contained in a
14 UNIX-based operating system work, right?

15 A. As long as updated, yes.

16 Q. And if you look at 901, that's a file called authorized
17 keys, right?

18 A. Correct.

19 Q. And that file is associated with a computer program called
20 SSHD or open SSH Daemon, right?

21 A. I believe that is correct.

22 Q. And are you familiar with the system manager's manual for
23 that computer program SSHD?

24 A. I have not reviewed that manual, no.

25 Q. Isn't the comment field not used for anything other than

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Shaw - cross

1 the convenience of the user to identify the key?

2 A. Again, I don't know if that is referred to as a comment
3 field or not. I have not reviewed the page on that.

4 Q. With respect to the Silk Road market server image that you
5 worked on, right?

6 A. Yes.

7 Q. There was an image of the server captured October 8, 2013;
8 correct?

9 A. Correct.

10 Q. And you received the Silk Road marketplace server by
11 recreating a local copy of the server on your computer, right?

12 A. Correct.

13 Q. And just for purposes of shorthand, that was the server
14 ending in the IP address, last two digits .49, right?

15 A. I don't remember the IP address off the top of my head.

16 Q. Let's look at 603A -- Government Exhibit 603A.

17 This is the image that you used to create a local copy
18 of the Silk Road marketplace on your computer, right? In other
19 words this is the log entry?

20 A. That looks familiar. Correct.

21 Q. And if you look at the created date on the top -- I'm
22 sorry, on the left as you go down it says: Task, status and
23 created date is Tuesday, October 8, 2013, right?

24 A. That's what it says. Yes.

25 Q. And the image that you get is essentially -- not

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Shaw - cross

1 essentially, the image that you get is a snapshot of what
2 exists on the computer at that moment in time, right?

3 A. Correct.

4 Q. Now, I want to direct your attention back to Government
5 Exhibit 936, please. If we look at the third entry in the
6 second paragraph, the one that begins on March 14, 2013 at
7 11:26, right?

8 A. Okay.

9 Q. If you look at the second paragraph of that and at first it
10 says -- it says it is from friendlychemist:

11 "u dont know me but i am lucydrops supplier. the only
12 reason i lent lucydrop so much product is bcuz he showed me the
13 chat logs of u and him talking and how u made him the #1 seller
14 on silkroad."

15 Now, do you know whether that is accurate or not, that
16 statement?

17 MR. HOWARD: Objection.

18 THE COURT: Overruled.

19 THE WITNESS: I do not know.

20 THE COURT: I take it by that you mean did he see it,
21 a reference to that elsewhere?

22 MR. DRATEL: Right.

23 THE COURT: Was that the question?

24 MR. DRATEL: Yes, your Honor.

25 THE COURT: Is that how you understood the question?

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Shaw - cross

1 THE WITNESS: Yes.

2 THE COURT: Yes?

3 THE WITNESS: Yes.

4 THE COURT: All right.

5 BY MR. DRATEL:

6 Q. Further down that entry do you see the paragraph that
7 begins:

8 "i put a keylogger on lucydrops computer when he left
9 the room one day"...

10 Right? Do you see that?

11 A. Yes.

12 Q. So, when you were looking at hacking software, right, which
13 you showed us on Thursday as well, can you explain what a key
14 logger is?

15 MR. HOWARD: Objection. Beyond the scope.

16 THE COURT: Sustained.

17 MR. DRATEL: Your Honor, the government read this
18 document.

19 THE COURT: No, they can read the document, but
20 whether or not he knows about how to interpret the content is
21 different. So, you can ask him about the matters that he went
22 over in his direct.

23 MR. DRATEL: Your Honor, he also testified about
24 hacking software such as that, key loggers, in his direct.

25 THE COURT: If he talked about it then certainly you

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Shaw - cross

1 can go into that. Don't tie it to the document but go ahead
2 and question him about things he otherwise testified to.

3 BY MR. DRATEL:

4 Q. In terms of hacking software, what does a key logger do?

5 A. Key logger? It is my understanding that it logs your key
6 strokes.

7 Q. When you say logs your key strokes, you mean for someone --
8 it could be done by someone who is not at the computer,
9 correct?

10 MR. HOWARD: Your Honor, objection. Beyond the scope.

11 THE COURT: You know, Joe, my LiveNote has gone out.

12 I will allow this to the extent -- I can't look and
13 see what he testified to on direct as to this topic because my
14 LiveNote is not currently working.

15 MR. HOWARD: Your Honor, if we can have a side bar we
16 can make a proffer as to that or maybe he could move on to a
17 different issue and come back once you can verify that.

18 THE COURT: We can do it even more easily. Why don't
19 you say do you recall testifying on direct that? And then that
20 will remind me and it will have the benefit of reminding
21 everybody and then we can take it from there.

22 BY MR. DRATEL:

23 Q. Do you recall testifying on direct about hacking tools and
24 reading from the screen pages about what hacking tools were
25 available on Silk Road?

F225ulb4

Shaw - cross

1 MR. HOWARD: Objection.

2 THE COURT: Well, that question he can answer.

3 THE WITNESS: I didn't read out loud any of the
4 hacking tools. I described that there were listings for items
5 referred to as hacking tools.

6 Q. Known as key loggers, right?

7 A. That is correct.

8 Q. So, when you say a key logger logs strokes, it is not by
9 the person who is actually logging them, right? It is someone
10 who wants to know what the person, as a hacking tool -- it is
11 for someone who wants to know what the person is doing on the
12 computer while the person who wants to know is not there,
13 right?

14 MR. HOWARD: Objection to scope and foundation and
15 form.

16 THE COURT: Now it is sustained.

17 BY MR. DRATEL:

18 Q. Now, let's go to page 8, please, of 936.

19 That blue portion, that's not from the chats, right?

20 A. On this page, that is correct, it is not from the chats.

21 Q. And all blue portions for the entire document are not from
22 the chats, right?

23 A. They are not from the marketplace chats, that's correct.

24 Q. They are from the forum, correct?

25 A. From a file -- backup file from the forum, correct.

F225ulb4

Shaw - cross

1 Q. And that forum is available to the entire Silk Road
2 community, correct?

3 A. That is my understanding. Correct.

4 Q. And it is imported into this document, correct?

5 A. Correct.

6 Q. So, when we are looking at the -- so, when this was taken
7 off the server, that blue part wasn't there in that chat,
8 right?

9 A. It was not blue. That is correct.

10 Q. No, but it wasn't there.

11 A. Wasn't where? I'm sorry.

12 Q. In other words, the next entry on the chat is the next
13 white entry, not the next blue entry; correct?

14 In other words let's parse this out. Let's go to the
15 entry right above it, 3/15/2013 at 20:42, right?

16 A. Yes.

17 Q. And that's 8:42 p.m., correct?

18 A. Correct.

19 Q. We are talking military time here, right? 24-hour clock.

20 Okay, so then we have a blue section and then we have
21 another blue section on page 9, right? All blue, right?

22 A. Correct.

23 Q. And then we have 10 which is all blue again, right?

24 A. Correct.

25 Q. And then we have 11 which is all blue, right?

F225ulb4

Shaw - cross

1 A. Correct.

2 Q. And then we have 12 which is all blue?

3 A. Correct.

4 Q. And we have a part of 13 that is all blue?

5 A. Correct.

6 Q. Then we have 3/21/2013 at 1:33, that's the next white
7 entry, correct?

8 A. Correct.

9 Q. And, in fact, that white entry is the next entry on the
10 private message chat, correct?

11 A. On the -- yeah, the Silk Road marketplace, correct.

12 Q. So, all that blue stuff was imported into this document,
13 correct?

14 A. Correct.

15 Q. So, if I were to print out just the part that is white I
16 would not see any blue. This was created for purposes of the
17 trial, right?

18 A. It was the weaving of two different.

19 Q. It was created for the trial, right?

20 A. Correct.

21 Q. Did you do it?

22 A. I participated in the creation of this, yes.

23 Q. It is actually occurring on a public forum -- when I say
24 public I mean for any Silk Road user, anyone with a user
25 account, anyone with a user name, anyone with access to the

F225ulb4

Shaw - cross

1 Silk Road site, right?

2 A. There is the one individual forum post on page 8 and then
3 the rest were one-on-one messages.

4 Q. But on the forum page?

5 A. On the forum site, correct, the separate site.

6 Q. If you go to page 16, 3/26/2013, that second, the third
7 entry, the second white entry at 20:08, right? And it says:

8 "That is interesting."

9 This is from redandwhite, right?

10 A. Correct.

11 Q. And it says:

12 "That is interesting. How much is it possible to sell
13 on here if we listed every product far cheaper than everyone
14 else? We have a majority hold over most of the movement of
15 products in western Canada (one of the main drug ports to North
16 America)."

17 It says that, right?

18 A. Yes, it does.

19 Q. Now, if we go to page 17 at March 27, 2013 at 23:38.

20 Do you see that entry?

21 A. Yes, I do.

22 Q. By the way, that blue one in the middle there again, that
23 belongs on the Silk Road forum, right?

24 A. Right. That is a message on the Silk Road forum, correct.

25 Q. Okay, that paragraph:

F225ulb4

Shaw - cross

1 "In those categories, I think you could be doing over
2 \$1M in sales a week within a few months. It is hard to estimate
3 because it depends on how much market share you get and also
4 the site as a whole is constantly growing. You will need to
5 become very proficient at stealth shipping and packaging if you
6 aren't already. Think vacuum sealers and leaving no forensic
7 evidence on your packages. You will also want to ship from
8 multiple drop points so you can't be traced back via your
9 (fake) return address.

10 If you go through with this, I would contact some of
11 the top vendors and hire them to consult you. Ask the weed
12 vendors because you won't be competing with them and their
13 product is smelly and looked for by USPS" --

14 That would be the United States Postal Service?

15 MR. HOWARD: Objection.

16 THE COURT: Sustained.

17 Q. -- "so they have to be on top of their game."

18 MR. HOWARD: Objection to form.

19 Q. It says that, right?

20 THE COURT: Yeah. What is the objection?

21 MR. HOWARD: I thought that was the question. I
22 didn't realize.

23 THE COURT: Do those words appear on the page?

24 THE WITNESS: Yes, they do.

25 THE COURT: All right.

F225ulb4

Shaw - cross

1 BY MR. DRATEL:

2 Q. That is talking about security, correct?

3 MR. HOWARD: Objection.

4 THE COURT: Sustained.

5 He can't talk about what the content means. He can
6 talk about what the content is on the page but he can't
7 interpret the content. So, move on.

8 MR. DRATEL: Your Honor, this is a witness who put the
9 document in evidence.

10 THE COURT: He did. He did put it in evidence. He
11 can't interpret what the people meant.

12 BY MR. DRATEL:

13 Q. Let's go to April 2nd, 2013 at 20:55, page 24.

14 A. Okay.

15 Q. And that entry which is in the middle of the page, if we
16 can blow that up a little bit it says:

17 "Regarding image metadata, you can strip all of that
18 out and it is a good practice. The upload page is secure, but
19 I would still have access to that metadata."

20 By the way, this is from Dread Pirate Roberts to
21 redandwhite?

22 A. Correct.

23 Q. So:

24 "Regarding image metadata, you can strip all of that
25 out and it is a good practice. The upload page is secure, but

F225ulb4

Shaw - cross

1 I would still have access to that metadata. Of course you can
2 trust me, but what if I was compromised? Do a search of
3 'remove image metadata.' A decent one for windows can be found
4 here:"

5 And there is a URL, correct?

6 A. Correct.

7 Q. "Regarding bitcoin withdrawal, I would avoid mt gox if at
8 all possible, especially if you are withdrawing to a USA
9 account. There are many other exchanges that don't have so much
10 attention on them."

11 It says that, right?

12 A. Yes, it does.

13 Q. And if you look at the bottom, April 4, 2013, that one it
14 says:

15 "I can't find a surname anywhere of Lawsry."

16 L-A-W-S-R-Y?

17 A. Yes, it says that.

18 Q. In fact, you heard the stipulation, right, that there was
19 no person by that name?

20 MR. HOWARD: Objection.

21 THE COURT: Sustained.

22 BY MR. DRATEL:

23 Q. Now, let's go to 4/6/2013 on page 26 at 57 minutes, so that
24 would be 12:57, right, after midnight?

25 A. Correct.

F225ulb4

Shaw - cross

1 Q. 12:57 a.m., right?

2 A. Correct.

3 Q. And just look at that, we will go to the third sentence:

4 "He is likely sitting on many thousands of stolen
5 bitcoins perhaps tens of thousands, so I would think we'd want
6 to "work him over" to get those funds back. They could be on an
7 encrypted drive only he can unlock."

8 Right? It says that?

9 A. Yes, it does.

10 Q. Now, from your knowledge of the server, having reviewed the
11 server and the private messages, is there any way for you to
12 tell whether or not lucydrop, redandwhite, reallucydrop,
13 friendlychemist, whether they're different people or the same
14 people?

15 A. There is -- no. Not that I can think of.

16 Q. Now, this set of messages occurs from March -- from page 1
17 is March 13, 2013, right?

18 A. Correct.

19 Q. And goes up to April 18th, 2013 -- actually, April 21st,
20 and then there is one also on June 1st, but the particular
21 string is pretty much through April 21st, right?

22 A. Correct.

23 Q. Going back to the SSH key for a second, that was changed
24 March 26, 2013? Is that right?

25 THE COURT: I'm sorry, could you have the court

F225ulb4

Shaw - cross

1 reporter read back the question? I missed it.

2 MR. DRATEL: I can rephrase it.

3 THE COURT: Either way. My LiveNote is still not up,
4 we are trying to fix it.

5 BY MR. DRATEL:

6 Q. Going back to the SSH keys, you testified, I believe on
7 Thursday, that it was modified -- the frosty@frosty was
8 modified March 26, 2013, right?

9 A. Can you tell me which exhibit that was, please?

10 Q. I think it is 603.

11 A. 900s, hopefully.

12 Q. 901?

13 A. Thanks. That is correct; recorded date modified was March
14 26, 2013.

15 THE COURT: I am back in business here with LiveNote.

16 Mr. Dratel, I think you got an answer.

17 MR. DRATEL: Thank you, your Honor.

18 BY MR. DRATEL:

19 Q. If we can go to Government Exhibit 1201?

20 MR. HOWARD: Objection, your Honor. This has not been
21 admitted into evidence.

22 THE COURT: Take it down and let's find out if it was.

23 MR. DRATEL: It may not be, your Honor. It was not
24 the one I was looking for.

25 THE COURT: So you are looking for a different

F225ulb4

Shaw - cross

1 exhibit?

2 BY MR. DRATEL:

3 Q. Government Exhibit 1200, that is in evidence; just look at
4 the date on that, does it say March 16th?

5 A. Yes, it does.

6 Q. 2013?

7 A. Yes.

8 MR. HOWARD: Objection, your Honor. This is
9 argumentative.

10 THE COURT: Well, I don't know where it is going yet,
11 so overruled. Let me see where it is going.

12 MR. DRATEL: It is precisely what the government does
13 in all of its examinations.

14 THE COURT: Let's see where it goes. I am overruling
15 the objection. Go ahead.

16 BY MR. DRATEL:

17 Q. I am saying that this is March 16, 2013, right; and there
18 is a post by frosty to stackoverflow, right, about code,
19 correct?

20 A. I'm not familiar with this exhibit but it is what it looks
21 like, yes.

22 Q. Then if we go to the next entry in this exhibit, if we go
23 up further, okay, if we go to -- that's March 16, 2013 and the
24 last modification of the authorized user key for the 16789SH
25 was March 26, 2013, correct?

F225ulb4

Shaw - cross

1 A. Correct.

2 Q. And you don't know what it was before then because you just
3 have what it was changed -- what became of it as of March 26,
4 2013, right?

5 A. That is correct.

6 Q. With respect to 940A that is in evidence, you said that the
7 null category was not included in your analysis?

8 A. It is included in Exhibit 940 -- or 940A.

9 Q. 940As it included, but when you did the pie chart you
10 didn't include it, correct?

11 A. That is correct.

12 Q. And so, the null transactions account for about 11 or 12
13 percent of the entirety, right, of the transactions?

14 A. Doing a quick double-check here. That's approximately
15 correct.

16 Q. And the reason they're null, just again, is because you
17 could not categorize them, correct?

18 A. That is correct.

19 Q. Let's talk about 940D and the total number of commissions
20 over the life the Silk Road is 642,455 bitcoin, right?

21 A. That's what it says. Correct.

22 Q. And the dollar value of \$13 million is based on the value
23 of bitcoin at the time of the transaction, correct?

24 A. As it was recorded in the database.

25 Q. So, in other words, if the database recorded bitcoin value,

F225ulb4

Shaw - cross

1 let's say, in 2012, bitcoin value might be different in 2013,
2 correct?

3 A. Correct.

4 Q. And that would influence not the value -- not the number of
5 bitcoin but in fact the value of the money, correct, in terms
6 of exchange into dollars, right?

7 Let me pose it a simpler way for everybody's benefit,
8 including mine.

9 If a transaction in October of 2012 is 1 bitcoin is
10 worth \$4.50, right, that would look there at 1 bitcoin and at
11 the bottom, U.S. equivalent would be \$4.50, right?

12 A. Correct.

13 Q. If that same transaction occurred with bitcoin at a value
14 of \$12 a bitcoin, it would still be 1 bitcoin on the
15 commissions but the dollar value -- U.S. dollar equivalent
16 would be \$12, right?

17 A. That's what the database would -- should reflect, yes.

18 Q. And so that the database only reflects the value of bitcoin
19 in the transaction, correct? Right?

20 A. Correct.

21 Q. Did you look at the value of bitcoin over time?

22 A. No. I was pulling it from the database. The value
23 recorded in the database.

24 Q. Let me show you what is in evidence as Defendant's Exhibit

25 B. It is in evidence. This is a graph of the value of bitcoin

F225ulb4

Shaw - cross

1 over time and so in the context of your chart which is 940D, it
2 doesn't tell you what the value is of those commission bitcoins
3 at any point in time other than what is in the database at the
4 time of the transaction, correct?

5 A. It tells you what the value was recorded in the database.

6 Q. Right; but it doesn't tell you what happens a month or a
7 year later if those bitcoins are still held and whether the
8 price has appreciated. It is not reflected in that chart?

9 A. Yes. To my understanding that that field does not change,
10 correct, once entered in.

11 Q. So that if you had 100 bitcoins at a dollar, right, and in
12 2012 and you held on to them until November 2013 as on that
13 graph when it peaks at, and we will say \$1,000, just for round
14 numbers, that 100 bitcoins at a dollar each would be worth a
15 thousand times more, correct?

16 MR. HOWARD: Objection. Beyond the scope.

17 THE COURT: Well, no. It is, I think, related to what
18 he was saying before but I think it has been asked and
19 answered. But, I will allow this last question.

20 MR. DRATEL: Thank you, your Honor.

21 THE WITNESS: Yeah, the value of the bitcoin varies
22 wildly.

23 BY MR. DRATEL:

24 Q. And it would be a thousand times more but it wouldn't be
25 reflected on 940B?

F225ulb4

Shaw - cross

1 A. It is my understanding, yeah, that the value in the
2 database did not change.

3 Q. I want to draw your attention to Government Exhibit 935.
4 If you look at that first entry, this is from shefoundme to
5 KingofClubs, June 10th, 2013. Right?

6 A. Correct.

7 (Continued on next page)

F22gulb7

Shaw - cross

1 Q. And you testified about this Thursday?

2 A. Correct.

3 Q. And this is about shefoundme ordering fake IDs, right?

4 MR. HOWARD: Objection.

5 THE COURT: Hold on. Well, I think the document says
6 what it says. I don't want the witness to be interpreting it,
7 but if you want to read something into the record, you can do
8 that.

9 MR. DRATEL: Okay.

10 Q. Let's read from the top "Hi I need a few of your highest
11 quality IDs. I notice several attributes you list: Hologram,
12 UV, scannable, raised lettering. Can you give me a rundown of
13 the importance of these attributes and what they are needed
14 for? For example, which are needed to pass airport security
15 for a domestic flight?"

16 Right?

17 A. Yes, it says that.

18 Q. "Which are needed to get through being pulled over by a
19 cop." Right?

20 A. Yes.

21 Q. And if you go to page two, again, from shefoundme
22 to -- June 10, 2013, shefoundme to KingOfClubs, right?

23 A. Correct.

24 Q. And then if you look at the third-to-the-last paragraph
25 down at the bottom, it's a one-line paragraph, "Can you comment

F22gulb7

Shaw - cross

1 on the suitability of using any of these IDs to board a
2 domestic USA flight." Right?

3 A. Yes, it says that.

4 Q. Then it says "Can you please comment on what the various
5 attributes mean. For example, does UV mean if it is held under
6 a UV light then some pattern appears that makes it look legit.
7 If it doesn't have UV, does that mean if it is held under UV
8 light, it will be exposed as a fake? In general, how much
9 scrutiny can these cards hold up against?"

10 Right?

11 A. Yes.

12 Q. Now, if we go to page 11, July 18, 2013, the one right in
13 the middle of page 132606, right?

14 A. Okay.

15 Q. From shefoundme to KingOfClubs: "Looks like it got stuck
16 in customs. The last step is 'inbound out of customs' on the
17 tenth. Have you ever had something seized or any of your
18 customers get in trouble?"

19 Right it says that?

20 A. Yes, it does.

21 MR. DRATEL: May I have a moment, your Honor.

22 THE COURT: Yes.

23 Q. With respect to SSH keys and what we talked about before
24 with respect to a manual, right, the system manager's manual,
25 are you familiar with them?

F22gulb7

Shaw - cross

1 A. I'm familiar with man pages in general.

2 Q. So are you familiar with the SSH-D system manager's manual?

3 A. I have not reviewed that one; no.

4 Q. But you testified here about SSH keys, right?

5 A. That is correct.

6 MR. DRATEL: Nothing further. Thank you.

7 THE COURT: All right. Thank you.

8 Mr. Howard.

9 MR. HOWARD: I'll be very brief.

10 THE COURT: All right.

11 MR. HOWARD: Mr. Evert, can you please publish
12 Government Exhibit 936 again, please.

13 REDIRECT EXAMINATION

14 BY MR. HOWARD:

15 Q. Mr. Shaw, this is a compilation of messages involving the
16 Dread Pirate Roberts, correct, other than the forum posts?

17 A. That's correct.

18 Q. Can we go to page seven, please. And the one that's shaded
19 here on blue on page eight, that's the forum post, right?

20 A. That is correct.

21 Q. A forum post can be seen by many users on Silk Road, right?

22 A. That's correct.

23 Q. Can we go to the next page. Isn't it true that you
24 testified that all of the other messages shaded in blue were
25 private messages taken from the forum database, correct?

F22gulb7

Shaw - redirect

1 A. That's correct.

2 Q. Those are one-to-one private messages involving Dread
3 Pirate Roberts, correct?

4 A. Correct.

5 Q. So 936, apart from that forum post, contains private
6 messages taken from the private message database on the
7 Marketplace, correct?

8 A. Correct.

9 Q. And also private messages between Dread Pirate Roberts and
10 other individuals taken from the forum database?

11 A. Correct.

12 Q. And all of these were contained on the servers you
13 reviewed?

14 A. Yes, they were.

15 Q. You testified about MD5s and SHA1s on cross, right?

16 A. Yes, I did.

17 Q. And you testified that whether or not you used one or both
18 comes down to the use case, correct?

19 A. Correct.

20 Q. What do you mean by "use case"?

21 A. For the purposes -- there are multiple use cases for
22 hashing a file. Typically in the forensic world, users will
23 create what's called a white list, you know, known files. And
24 so it's common to create hash values of those files so that
25 way, you know, every Windows computer ever has notepad.exe, so

F22gulb7

Shaw - redirect

1 if you create a hash value of that file, whenever you import
2 your new image, you can quickly exclude that image. So it's a
3 process for quickly excluding files. So it's fairly common to
4 use hash values to eliminate files that need review and there
5 was, you know, a few years ago some academic papers and studies
6 on weaknesses in MD5 for that purpose.

7 Q. So for the purpose of creating forensic images, however,
8 are you aware of weaknesses in MD5?

9 A. For comparing whether a file has changed, you know, whether
10 it's been under control and whether it's changed from point A
11 and point B, MD5 is still used; yes.

12 Q. So relying on MD5 alone would be sufficient?

13 MR. DRATEL: Objection.

14 THE COURT: Sustained.

15 You can ask a different way.

16 Q. Is MD5 alone accepted in the community as a way of
17 verifying forensic copies?

18 MR. DRATEL: Objection; form.

19 THE COURT: I'll allow it.

20 A. MD5 is a -- still considered a technique for verifying if a
21 file changed in transit. With hash values, if they're -- that
22 weakness that I discussed, something else will also change in
23 the process. So the size of the file will likely change almost
24 always will get larger. Additionally, if it's, like, a jpeg
25 type image, that the image would get corrupted. So when it

F22gulb7

Shaw - redirect

1 comes to verifying whether a file changed in transit, it's
2 still considered a valid process.

3 MR. HOWARD: No further questions, your Honor.

4 THE COURT: Mr. Dratel.

5 RECROSS EXAMINATION

6 BY MR. DRATEL:

7 Q. It's not most valid process, though, is it, right? SHA1 is
8 more reliable than MD5?

9 A. SHA1 is the newer standard that --

10 Q. I'm sorry --

11 A. The newer process that doesn't have the same weakness as
12 MD5.

13 Q. And with respect to the 936 of those posts, those
14 were -- the blue sections were imported from a
15 different -- that's a separate conversation going on from the
16 white ones, right --

17 A. That is correct.

18 Q. -- in terms of where it's occurring?

19 A. Correct.

20 MR. DRATEL: Thank you. Nothing further.

21 THE COURT: All right. Thank you. You may step down,
22 sir.

23 THE WITNESS: Thanks.

24 (Witness excused)

25 THE COURT: Mr. Howard.

F22gulb7

Shaw - recross

1 MR. HOWARD: The government would like to read one
2 last chat into evidence.

3 THE COURT: All right.

4 MR. HOWARD: 229D as in dog, please.

5 THE COURT: All right.

6 MR. HOWARD: This is from page 49 of a 139-page chat
7 log, October 24, 2012: "inigo: if you dont mind me asking.
8 what do you tell your family that you do?

9 Myself: opportunity of a lifetime, of many lifetimes

10 Myself: I live a modest life still

11 Myself: security requires it

12 Inigo: absolutely

13 Myself: so I have my little alibi

14 Myself: I'm clever, so I can bs when I need to

15 Myself: but I hate having to lie to people

16 Inigo: nothing raises a red flag more then a nobody
17 becoming a big somebody out of no where

18 Inigo: yeah i hear ya

19 Myself: and friends will tell me shit like, why don't
20 you do this or that

21 Myself: like I have all this free time

22 Myself: I just want to scream at them "because i

23 Myself: 'm running a goddam multi-million dollar
24 criminal enterprise!!!!"

25 The government rests, your Honor.

F22gulb7

Shaw - recross

1 THE COURT: Thank you, Mr. Howard.

2 Defense.

3 MR. DRATEL: I have some applications.

4 THE COURT: Save the applications for the end of
5 the -- we'll hold on until the end of the court day. The
6 defense can proceed.

7 MS. LEWIS: The defense calls Karen Steib Arnold.

8 (Witness sworn)

9 THE COURT: Ms. Steib Arnold, please be seated. And
10 it will be important for you to pull the chair up and to adjust
11 the microphone so that you can speak into it clearly. And
12 there will be some water there as soon as we get a new pitcher
13 for you.

14 THE WITNESS: Great. Thank you.

15 THE COURT: Ms. Lewis, you may proceed.

16 KAREN STEIB ARNOLD,

17 called as a witness by the Defendant,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. LEWIS:

21 Q. State your name for us again.

22 A. Karen Steib Arnold.

23 Q. How old are you, Mrs. Arnold?

24 A. I'm 72.

25 Q. Where do you live?

F22gulb7

Steib Arnold - direct

1 A. I live in Austin, Texas.

2 Q. Are you a Texas native?

3 A. I lived in Texas since I was three years old.

4 Q. What do you do for work?

5 A. I'm a mental health counselor.

6 Q. What does that job involve?

7 A. I work with people who have problems that can be solved
8 with talk therapy. I also work with some chronic pain
9 sufferers who have both physical therapy and talk therapy. I
10 help people to explore their inner life and to come to see
11 things in ways where they can navigate life comfortably.

12 Q. In what context do you perform these services?

13 A. I've worked in the clinics. I also have a private
14 practice. Right now I'm associated with a chronic pain clinic
15 and I have a private practice. I've also worked in a rape
16 crisis clinic with sufferers of -- survivors of childhood
17 sexual abuse and rape. And I have also worked with grief and
18 dying-type -- people who are dying and those who are surviving
19 them and grieving. And I've worked with other chronic pain
20 patients.

21 Q. Before your private practice, did you have something else
22 that you did?

23 A. I was a social worker for many years.

24 Q. And how long have you done this work collectively, the
25 private practice and the social work?

F22gulb7

Steib Arnold - direct

1 A. About 45 years.

2 Q. What are the ages of the people that you assess?

3 A. Pretty much all ages, not babies, but school-age children
4 to geriatrics.

5 Q. And what is your education background?

6 A. I have a Master's degree and every year I get continuing
7 education.

8 Q. What is your Master's in?

9 A. Counseling psychology.

10 Q. Are you familiar with Ross Ulbricht?

11 A. Yes.

12 Q. And how are you familiar with Ross?

13 A. Ross' family, our family are kind of intertwined. We're
14 like twin families. See, I'm good friends with his mother. My
15 husband is good friends with his dad. And we have two children
16 the same ages as Ross and Cally. So all the time our kids were
17 growing up, we did things together as families and with other
18 families, we'd go to the beach, go sailing. I keep their kids,
19 they keep my kids. We were twins.

20 Q. And how long have you known Ross?

21 A. His whole life.

22 Q. And do you see Ross in the courtroom today?

23 A. Where is Ross? Yes, I do. He has a brown shirt and blue
24 collar.

25 Q. Have you kept in touch with Ross over the years?

F22gulb7

Steib Arnold - direct

1 A. Oh, yes.

2 Q. And is that including after he graduated from college and
3 graduate school?

4 A. Yes. Definitely.

5 Q. And he was back in Austin at that point?

6 A. Yes.

7 Q. And do you have any knowledge of what other people think of
8 Ross?

9 A. Well, sure yes, I do.

10 MR. TURNER: Objection.

11 THE COURT: Why don't you -- depending upon where
12 that's going to go, let's talk about her first, all right.

13 MS. LEWIS: Yes.

14 THE COURT: Thank you.

15 Q. So in what context have you -- do you have knowledge of
16 what people think of Ross?

17 MR. TURNER: Objection to form.

18 A. We have a community of people --

19 MR. TURNER: Objection to form.

20 THE COURT: We'll just have you talk about --

21 Q. Do you personally have knowledge of what people think of
22 Ross or what Ross -- what was your personal interaction with
23 Ross over time?

24 A. Well, depending on the age, because as I said, I've known
25 him all his life when he was --

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Steib Arnold - direct

1 Q. So we'll take it in portions then. Let's say when he was
2 young during his school years.

3 A. Well, he would stay with us at our house. Our kids would
4 stay at his house. We'd all visit together. Because, you
5 know, to have a family that matches like that is pretty
6 special, so we spent a lot of time together. And I was around
7 Ross a lot as he was a little kid and I was an adult when he
8 was little.

9 Q. And through his teen years, high school years, what was the
10 context of those connections with Ross?

11 A. The same thing that we did together, things together as
12 families, but it changes of course, when kids grow up. He
13 began to see me as a friend as well as an adult because he was
14 becoming an adult, so I would say he was my friend and the
15 child of one of my friends.

16 Q. And then later on after he graduated college and was back
17 in Austin, did you see him then, too, and what was the context
18 of that relationship?

19 A. Yes. Similar, except that Ross was older, so
20 sometimes -- I mean, I remember once he lent me his car because
21 mine was in the shop. I would see him either when his parents
22 were there or when they weren't, but we always kept in touch.
23 We were almost like relatives the way our families related.

24 Q. Okay. Do you have knowledge of other people's
25 relationships with Ross?

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Steib Arnold - direct

1 A. Well, sure. Yes, I do. We were -- there are many families
2 with kids that got together and did things and had activities
3 together, so I knew all of them. We were friends. We'd have
4 parties or go to the beach or go sailing, so I knew a lot of
5 people who were in that same group.

6 Q. And was this at all those different stages in his life that
7 you spoke about as a younger and teen years and after college?

8 A. Yes. Yes.

9 Q. Do you have knowledge of what those other people thought of
10 Ross?

11 MR. TURNER: Objection.

12 THE COURT: Sustained. You can ask it in a different
13 way. And I assume that you'll get there.

14 Q. Are you familiar with Ross' reputation in the community?

15 A. Yes.

16 Q. And have you discussed his reputation with other people in
17 the community?

18 A. Yes, I have.

19 Q. And have you talked to them about their impressions of
20 Ross?

21 A. Yes.

22 Q. And have you talked to them about his reputation for
23 peacefulness and nonviolence?

24 A. Yes.

25 Q. And what is Ross' reputation for peacefulness and

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Steib Arnold - direct

1 nonviolence?

2 MR. TURNER: Objection.

3 THE COURT: Sustained.

4 MS. LEWIS: May I lay a foundation, your Honor, the
5 number of people, who they are?

6 THE COURT: I don't think that's the issue.

7 MS. LEWIS: Can we have a side bar, your Honor?

8 THE COURT: Sure.

9 (Continued on next page)

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Steib Arnold - direct

1 (At the side bar)

2 THE COURT: All right. So that I understand, why
3 don't you tell me what rule that you are thinking you're
4 operating under so we're on the same page?

5 MS. LEWIS: 804 and 805 involving reputation in the
6 community.

7 THE COURT: You mean 608?

8 MS. LEWIS: I'm sorry. It's 404(a) and 405.

9 THE COURT: This is why I wanted to ask you because I
10 was looking at 608.

11 MS. LEWIS: I misspoke.

12 THE COURT: That's all right. Let me take a quick
13 look.

14 MR. TURNER: Where are we?

15 THE COURT: 405.

16 MS. LEWIS: 404(a).

17 THE COURT: Yes. I'll allow the question under 405.
18 Let me ask Mr. Turner.

19 MR. TURNER: Partly it was a leading question.

20 THE COURT: I understand. I'll allow a little bit
21 with the character witness.

22 Thank you, Ms. Lewis.

23 (Continued on next page)
24
25

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Steib Arnold - direct

1 (In open court; jury present)

2 THE COURT: Do you want the question reread or just
3 ask it?

4 MS. LEWIS: I'll reask it.

5 Q. Do you have any knowledge of Ross' reputation in the
6 community for peacefulness and nonviolence?

7 A. Yes, I do.

8 Q. What is that reputation?

9 A. Everyone I know who knows Ross sees him as a very peaceful
10 and nonviolent person. He's compassionate, gentle; he always
11 has been. From the time he was a little child, he's a very
12 gentle and compassionate person.

13 MS. LEWIS: Thank you.

14 THE COURT: Thank you.

15 Mr. Turner, anything from you, sir?

16 MR. TURNER: No questions.

17 THE COURT: Thank you. You may step down, ma'am.
18 Thank you very much.

19 THE WITNESS: Thank you.

20 (Witness excused)

21 THE COURT: Would the defense like to call its next
22 witness, please.

23 MS. LEWIS: The defense calls Daniel Davis.

24 THE COURT: Mr. Davis, please to the stand.

25 (Witness sworn)

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Steib Arnold - direct

1 THE COURT: Mr. Davis, sir, please be seated and it
2 will be important for you to pull the chair up so you can speak
3 directly into that mic. and there's water there if you want it
4 at any point in time.

5 THE WITNESS: Okay.

6 THE COURT: Ms. Lewis, you may proceed.

7 MS. LEWIS: Okay.

8 DANIEL JEFFERSON DAVIS,

9 called as a witness by the Defendant,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. LEWIS:

13 Q. Can you state your name, sir.

14 A. Daniel Davis.

15 Q. How old are you?

16 A. I'm 30 years old.

17 Q. Where do you live?

18 A. Austin, Texas.

19 Q. And are you from Austin originally?

20 A. Yes, I am.

21 Q. Where do you currently work?

22 A. I work for the City of Austin, Watershed Protection
23 Department.

24 Q. What do you do?

25 A. I'm a GIS analyst, which is a -- computer mapping

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Davis - direct

1 essentially.

2 Q. And how long have you worked in that position?

3 A. I've been there for seven years.

4 Q. And what is your educational background?

5 A. I have a Bachelor of Science in Environmental Science.

6 Q. Are you familiar with Ross Ulbricht?

7 A. Yes, I am.

8 Q. And how are you familiar with him?

9 A. We went to school together, middle school and high school,
10 so I've known Ross for 17 years, 18 years.

11 Q. Do you see Ross in the courtroom today?

12 A. Yes, I do.

13 Q. Can you identify him by an article of clothing that he's
14 wearing?

15 A. He has a gray sweater and a blue collar.

16 Q. Have you kept in touch with Ross over the years?

17 A. Yes, I have.

18 Q. And did you keep in touch with him -- in what context do
19 you know him? Since when?

20 A. I'm sorry?

21 Q. And you know him since when again?

22 A. Since middle school, high school, so the past 17 years or
23 so.

24 Q. And did you keep in touch with him after high school?

25 A. Yes, I did.

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Davis - direct

1 Q. And what about in college?

2 A. Not so much when we were in college. We went to different
3 schools. I was in Oregon but after college, yes.

4 Q. And when did you resume your friendship after college on a
5 regular basis?

6 A. Probably 2010, 2011, back in Austin.

7 Q. Do you have knowledge of what Ross' reputation is in the
8 community?

9 A. Yes, I do. I'd say Ross has a good reputation.

10 Q. Let me ask in what community do you have that contact?

11 A. I mean, we have a pretty close friend group. So Ross knows
12 my wife and my mother and several of our other friends.

13 Q. And does this also include the community of the people that
14 you knew growing up with him in high school and college?

15 A. Yeah. We have several friends from back then that are
16 still good friends together.

17 Q. Do you have any knowledge about his reputation for
18 peacefulness and nonviolence?

19 A. Yes, I do.

20 Q. And what is his reputation?

21 A. It's very good. I mean, he's one of the most peaceful
22 people I know and his reputation among our friend group is the
23 same as being a very generous, kind, peaceful person.

24 Q. Thank you.

25 MS. LEWIS: No further questions.

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Davis - direct

1 THE COURT: Thank you.

2 Anything from you, Mr. Turner?

3 MR. TURNER: Briefly.

4 CROSS-EXAMINATION

5 BY MR. TURNER:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. So you are friends with Mr. Ulbricht for a long time?

9 A. I'm sorry.

10 Q. You were friends -- you have been friends with Mr. Ulbricht
11 for a long time?

12 A. Yes. Yes, that's true.

13 Q. He never told you that he created the Silk Road website?

14 A. No, he did not.

15 Q. He never told you he grew illegal drugs?

16 A. No. We never discussed that.

17 Q. Never told you he grew them and sold them on Silk Road?

18 A. No.

19 Q. Never told you he lived under a fake name for a while?

20 A. No, he never told me that.

21 Q. He never told you that he ordered nine fake IDs for himself
22 in different states?

23 MS. LEWIS: Objection. Improper and scope.

24 THE COURT: Well, overruled. But you can -- why don't
25 you rephrase the questions.

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Davis - cross

1 Q. Did he ever tell you that he ordered nine fake IDs for
2 himself?

3 MS. LEWIS: Objection.

4 THE COURT: Overruled.

5 A. No.

6 MS. LEWIS: Can I have a side bar.

7 THE COURT: No.

8 MR. TURNER: No further questions.

9 THE COURT: Ms. Lewis --

10 MR. DRATEL: Before the next --

11 THE COURT: But you're all set with this witness?

12 MS. LEWIS: Yes. No further questions.

13 THE COURT: Sir, you may step down. Thank you.

14 THE WITNESS: Thank you.

15 (Witness excused)

16 THE COURT: We'll get the witness next. Let's call
17 the next witness and get the witness on the stand, but we'll
18 have a side bar in the meantime so we can use our time
19 efficiently.

20 Who is the next witness?

21 MS. LEWIS: Thomas Haney.

22 (Continued on next page)

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Davis - cross

1 (At the side bar)

2 MS. LEWIS: Under Second Circuit case law, *United*
3 *States v. Orshats* (ph) this line of questioning is improper of
4 a character witness, a lay character witness, such as friends
5 or a neighbor. That case says that guilt-assuming hypothetical
6 questions when testifying about a defendant's reputation for a
7 character trait or expressing an opinion about such a trait are
8 impermissible.

9 THE COURT: Is that the case or your notes?

10 MS. LEWIS: It's just a note. You are welcome to see
11 it.

12 THE COURT: I'm looking at, in the rules, once you've
13 opened the door to certain kinds of things, then it opens the
14 door to specific instances of conduct.

15 MS. LEWIS: In that regard, the *United States v.*
16 *Danblue*, which is also a Second Circuit case, actually says
17 that direct examination does not open the door in that regard
18 to cross-examination that assumes the defendant's guilt with
19 respect to the charged crime, which is what this question does.

20 THE COURT: Double-teamed? That's okay.

21 MR. DRATEL: You haven't disallowed it on the other
22 side.

23 THE COURT: That's all right.

24 MR. DRATEL: They can't ask questions about candor as
25 a trait when the direct exam is about peacefulness and

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Davis - cross

1 violence. They can ask about peacefulness and violence, but
2 they can't open it up to other traits.

3 THE COURT: I think this is going to go fairly
4 quickly, and it's probably not worth spending a lot of time on.

5 MR. TURNER: In terms of guilt-assuming questions,
6 starting the Silk Road website is something they've opened.

7 MR. DRATEL: That's a different trait. That trait is
8 not at issue.

9 THE COURT: I hear you. Mr. Dratel's point is if
10 they're going to ask about peacefulness, then we should limit
11 it to peacefulness.

12 MR. TURNER: He's not charged with being nonpeaceful.
13 He's charged with --

14 THE COURT: I know, but you brought in instances of
15 some violent conduct, so I would certainly allow that. This
16 will be quick I assume.

17 MR. TURNER: Yes.

18 THE COURT: The next one is going to be similar?

19 MS. LEWIS: Yes.

20 THE COURT: Then the other two witnesses are going to
21 be here in the morning?

22 MS. LEWIS: I just got a text message from one of them
23 that his flight was waylaid to Cincinnati and won't arrive I
24 believe until late tonight. That's assuming he gets out.

25 THE COURT: We're not expecting to call him right now.

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Davis - cross

1 We're close enough to 5:00. That's all right.

2 Something else?

3 MR. HOWARD: The only it goes to impeach the witness'
4 actual knowledge of the --

5 THE COURT: What I'm saying is, let's just take this
6 relatively straightforward for the next witness and just I
7 think we can avoid it. I don't think this is something we need
8 to do.

9 MR. DRATEL: Very good.

10 (Continued on next page)

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Davis - cross

1 (In open court)

2 THOMAS HANEY,

3 called as a witness by the Defendant,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. LEWIS:

7 Q. State your name, please.

8 A. Thomas Haney.

9 Q. How old are you?

10 A. Thirty-one.

11 Q. And where do you live?

12 A. Cape Charles, Virginia.

13 Q. And have you always lived in Virginia?

14 A. No. I lived out west for the last eight years in different
15 places and I grew up in Austin, Texas.

16 Q. And how long did you live in Austin for?

17 A. From when I was seven until 18. I left in 2002.

18 Q. Do you still have family and friends in Austin?

19 A. Yes.

20 Q. Do you go back to visit them?

21 A. Yes.

22 Q. About how often is that?

23 A. Once or twice a year since 2002.

24 Q. Where do you currently work?

25 A. I work at the West Shelton Smoke Jumping Base in the

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Haney - direct

1 Summers and I do clam aquaculture in the winters in Virginia.

2 Q. What is your educational background?

3 A. I went to college at Prescott College in Arizona for
4 environmental studies and didn't finish when I went first, but
5 I just reenrolled to finish.

6 Q. Are you familiar with Ross Ulbricht?

7 A. Yes.

8 Q. How are you familiar with him?

9 A. We went to high school together. We played on the soccer
10 team together. And we just not to know each other over the
11 years, more after high school really than when we were in high
12 school.

13 Q. And how long have you known Ross for?

14 A. I guess 15 years since we were about 15 or 16 is when I
15 first met him.

16 Q. And do you see Ross in the courtroom today?

17 A. Yes.

18 Q. Can you identify him by an article of clothing he is
19 wearing?

20 A. He's got a gray sweater and a blue collar sticking out of
21 it.

22 Q. Have you kept in touch with him over the years?

23 A. I've seen him often over the years. We didn't really call
24 or email, but I don't really keep in touch with many people
25 that way and I don't know if Ross does either, but I've seen

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Haney - direct

1 him many times over the years and spent time with him.

2 Q. In what context did you see him?

3 A. There were a couple of times that I was with him and his
4 parents down in Costa Rica at their home for a fairly extended
5 period of time both times. And in and around Austin, we'd see
6 each other at Christmas and whenever I was in town. And yeah,
7 he'd come over to our parents' house or we'd go out swimming,
8 playing Frisbee, various things.

9 Q. Do you have a group of people in common that you see
10 together when you visit him or when you visit each other?

11 A. Yes. Generally there are a mutual group of friends that we
12 know.

13 Q. Where are those friends from?

14 A. Mostly Austin, actually entirely Austin.

15 Q. They're high school friends?

16 A. Yeah, high school friends. Yeah, I guess high school
17 friends, yeah. None from college.

18 Q. In addition to that or are there other people either way
19 over the years?

20 A. No. I'd say it's all high school friends that we have in
21 common basically.

22 Q. And do you have any knowledge of Ross' reputation amongst
23 those friends in that community?

24 A. Yes.

25 Q. Do you have any knowledge about his reputation for

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Haney - direct

1 peacefulness and nonviolence?

2 A. Yes.

3 Q. And what is his reputation for peacefulness and
4 nonviolence?

5 A. Just that he is an extremely calm, kind, and loving person
6 and that's something that always impresses everyone that really
7 knows him that I've talked to him about him.

8 MS. LEWIS: Thank you. No further questions.

9 THE COURT: Mr. Turner, anything from you?

10 MR. TURNER: No.

11 THE COURT: Thank you. You may step down.

12 (Witness excused)

13 THE COURT: Ladies and gentlemen, I think it makes
14 sense to break for the afternoon. And is there anybody else --
15 is tomorrow morning a better time to pick up?

16 MR. DRATEL: I think so.

17 THE COURT: We'll pick up tomorrow morning. I want to
18 remind you not to talk to each other or anybody else about this
19 case.

20 I hope to have an update for you tomorrow that will be
21 pretty clear about where we are but you see that we are now
22 into the defense case. I think that I'll have some further
23 information for you tomorrow.

24 Joe is going to order lunch for you now and through
25 the end of trial, so hopefully he'll vary the menus and we'll

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Haney - direct

1 also get you folks some sort of afternoon snack if there's
2 something in particular in terms of soda or drink that you
3 would like -- no alcoholic beverages -- then let Joe know. We
4 are limited in terms of what the courthouse has but we do want
5 to make you comfortable.

6 Thank you for putting up with the weather this morning
7 and getting in here. I know it may have been a bit of a
8 challenge. And we'll see you folks tomorrow. Goodnight.

9 (Jury excused)

10 (Continued on next page)

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Haney - direct

1 (In open court; jury not present)

2 THE COURT: Let's all be seated. I think the first
3 order of business is to take up the applications, Mr. Dratel,
4 that I told you we would take up at the break and then we'll go
5 into scheduling after that.

6 MR. DRATEL: Yes, your Honor. Pursuant to Rule 29 of
7 the Federal Rules of Criminal Procedure, I move for -- if I can
8 find my notes for a second -- I move for a judgment of
9 acquittal on all seven counts. And with respect to some of
10 the -- I want to lay out some of them in a little more detail.

11 With respect to the forgeries count, Count Six,
12 there's no venue and there's no evidence of Mr. Ulbricht's
13 involvement or intent or agreement in any respect with respect
14 to conspiracy.

15 With respect to the hacking, the conspiratorial aspect
16 of it, the only purchase that's in evidence is by an
17 undercover, so that would not qualify as a conspiratorial act
18 or at least to make a conspiracy, let's put it that way. And
19 there's no evidence of any intent by Mr. Ulbricht with respect
20 to the usage of these programs, which is something obviously we
21 addressed in the pretrial motions as well.

22 With respect to the other counts, Count Four, there's
23 no evidence that he supervised, managed or organized five
24 different people. There's no evidence as to identity of these
25 people. So, that is insufficient. The government is also, and

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Haney - direct

1 this obviously goes to a certain sense the legal argument, the
2 government has not identified a series of violations with
3 respect to the 848 count.

4 With respect to the other counts, the other
5 narcotics-related counts the government has not proved that
6 Mr. Ulbricht was a member of any conspiracy and certainly not
7 the conspiracy charged in the indictment.

8 And with respect to the money laundering count I think
9 it falls because the other counts fall and in addition, a lack
10 of sufficiency of evidence with respect to Mr. Ulbricht's
11 involvement in that as a conspirator. Thank you.

12 THE COURT: Thank you.

13 MR. TURNER: In terms of venue, the Second Circuit is
14 clear that projecting a website that is perpetrating a criminal
15 activity, you have cases involving websites that have been
16 fraudulent in nature --

17 THE COURT: Would you mind speaking up a little bit.

18 MR. TURNER: Sure.

19 THE COURT: Thank you.

20 MR. TURNER: In terms of venue, I think there are
21 several bases here, but I think the fundamental basis for venue
22 all of the counts is a projection of a website and that is a
23 this district in furtherance of the different crimes that that
24 website is facilitating and perpetrating.

25 So with respect to the forgeries issue, you have a

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Haney - direct

1 website that is advertising false identifications for sale and
2 part of the way it does that is by projecting the website
3 worldwide. Anywhere that website is viewed or anywhere where
4 it's reasonably foreseeable that it would be viewed, that is a
5 district that is an area where Mr. Ulbricht is projecting
6 activity into, and there's very clear Second Circuit case law
7 on that. The *Rowe* case, the *Romi* (ph) case.

8 In terms of forgeries, we entered into evidence, for
9 example, a forum post by Dread Pirate Roberts where he says I'm
10 creating a new category for fake IDs and passports. This was
11 on the website for a long time. So, clearly Mr. Ulbricht was
12 involved in the decision to offer those items for sale and he
13 was conspiring with the vendors of those items to traffic in
14 those false identity documents.

15 Hacking: Agent Der-Yeghiayan testified that hacking
16 tools were persistent offerings on the site and hacking
17 services were persistent offerings in the site. We offered
18 evidence from the Silk Road server as it was seized from the
19 FBI with 26 different listings in there that were there just on
20 the day it was seized. So these are a recurrent category of
21 items that were offered under digital goods. They were offered
22 under services. And we offered in evidence that Mr. Ulbricht
23 and his customer support staff, one of the things they did was
24 to police the site. If there were items that did not belong,
25 forget about the cyanide question, that was something they

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Haney - direct

1 looked for to pull those items off. So those computer hacking
2 services and tools were persistently offered items, something
3 that was tolerated by Mr. Ulbricht.

4 Every vendor on the site Mr. Ulbricht had an agreement
5 with. They had to click I agree to your terms, I have to agree
6 to follow your rules, and in return, Mr. Ulbricht got a cut of
7 their proceeds. It is fundamental; the essence of a
8 conspiracy.

9 Count Four in terms of supervising five different
10 people, there's lots of different people. Agent Der-Yeghiayan
11 testified that besides him at the time that he was working you
12 had libertas, you had inigo, you had samesamebutdifferent, you
13 had the person he took over the account from, scout/cirrus,
14 before he took it over. You have chats with programmers such
15 as h7 and smed. You have other customer support staff that we
16 have chats on the computer. You have DigitalAlchemy. You have
17 people like Variety Jones and Cimon.

18 You don't have to show under the law the true
19 identities of these individuals. There just has to be
20 sufficient evidence for the jury to conclude that they were
21 different individuals and, of course, there would be no reason
22 for the same individual to be contacting Mr. Ulbricht in all
23 these different roles. There is evidence upon which the jury
24 could reasonably conclude that these are more than five
25 different individuals.

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Haney - direct

1 In addition as we argued to your Honor before, we're
2 not limited to arguing that it was just the employees that he
3 was supervising. He was organizing all of the vendors on this
4 site, and there were hundreds and hundreds of different
5 vendors, different drug dealers. So, the limitation of five
6 different people is not a problem.

7 In terms of the no series of violations, this is a
8 three-year massive drug-dealing enterprise. You have a kingpin
9 of a traditional cartel, the cartel is involved in doing
10 hundreds and thousands and thousands of different drug deals.
11 That's what the statute goes after: Recurrent series of
12 transactions, and that's what you see here.

13 The testimony of Mr. Shaw today was based on
14 transactional data that has thousands and thousands of
15 different drug deals that Mr. Ulbricht abetted, that
16 Mr. Ulbricht participated in as a broker through his site. All
17 of those are part of the continuing series. All of the things
18 he did in terms of the forum posts in furtherance of the site,
19 these are all communications in furtherance of drug trafficking
20 that are in violation of 21 USC 843. So there are many
21 different specific violations the jury could look to in
22 determining whether the defendant committed the continuing
23 series.

24 In terms of Mr. Ulbricht being a member of the
25 conspiracy, again, he conspired with his employees. He

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Haney - direct

1 conspired with the vendors. He agreed with other people to
2 distribute the drugs, to aid and abet the distribution of drugs
3 and to use communications facilities in furtherance of drug
4 trafficking. So there's a reasonable basis for the jury to
5 find the defendant is guilty on all the counts and therefore
6 this motion should be denied.

7 MR. DRATEL: Just two issues: One is on the venue.
8 Rowe and Romi (ph) I think is more accurately characterized as
9 whether or not the activities of law enforcement agents can
10 create jurisdiction because there was no question there was
11 conduct -- connected conduct, not just projected -- but conduct
12 in the Southern District. And the question was whether,
13 because of the activities of the undercovers, that constituted
14 a jurisdictional nexus. In this case, we don't have that from
15 any of the charges, so I think there's a distinction.

16 If the principle is that anywhere a website is
17 available there is venue, then venue is meaningless in the
18 current age. And I think in a civil case you couldn't even
19 have that level of universal jurisdictional application, so I
20 don't see how it could apply in a criminal case.

21 With respect to the five people, true identity is not
22 really the issue. The issue here is there's no proof these are
23 different people. We have seen that Agent Der-Yeghiayan was 12
24 people at the same time, so we don't know who was who. There
25 is no proof sufficient beyond a reasonable doubt that these are

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Haney - direct

1 different people.

2 THE COURT: The standard for a motion under Rule 29 is
3 whether the judge thinks that there is sufficient evidence to
4 sustain a conviction and if the evidence meets that threshold,
5 then the case is to go to the jury. I find that the case
6 should go to the jury. I think that there is evidence to
7 sustain a conviction on each of the counts. Whether the jury
8 will decide to do so or not is ultimately up to the jury as
9 fact finders in this matter.

10 In terms of the venue issues, I have looked
11 extensively at the venue issues in connection with the jury
12 instructions. And the results of my determinations are set
13 forth in the jury instructions that were sent around yesterday
14 in the sense of including an instruction relating to websites.
15 Venue, of course, is a preponderance of the evidence standard.
16 And for certain counts, of course, there's even different and
17 much more direct evidence in terms of venue, but certainly
18 there's enough for a finding of venue here. So the motion is
19 denied. The case will go to the jury at the appropriate time.

20 Let's talk about what's going to happen next to get us
21 to the point where we're going to be having charging and
22 closings. So there are two witnesses, Ms. Lewis, who you
23 expect to be able to land tonight with the weather conditions?

24 MS. LEWIS: Yes. There are two witnesses that I do
25 expect to be able to land tonight. In fact, one of them I

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Haney - direct

1 actually know has already landed. One is here and the other
2 one I will assume will be able to arrive tonight, but I'll
3 certainly let the Court know.

4 THE COURT: There is an ice condition apparently, but
5 you'll figure it out and hopefully they'll be able to make it.

6 MS. LEWIS: We'll take it as it comes.

7 THE COURT: Get me an ETA if they're on some early
8 morning flight.

9 MR. DRATEL: Then we have the investigator who is
10 probably maybe a half hour on direct.

11 THE COURT: Are there three witnesses tomorrow?

12 MR. DRATEL: Yes.

13 THE COURT: You folks have exchanged whatever there is
14 in terms of 3500 materials and I've got Alden Schiller, Chris
15 Kincade and who is the other one?

16 MR. DRATEL: Bridget Prince is the investigator, your
17 Honor.

18 THE COURT: She'll be available tomorrow?

19 MR. DRATEL: Yes. Either way, even if the other
20 witnesses don't show up, she'll be available.

21 MR. TURNER: As to that witness, we received an
22 exhibit or set of exhibits that it looks like it's nothing more
23 than sort of what you'd present to the jury at closing. It's
24 just a summary of -- or a selection of different facts or
25 assertions that different witnesses have made. And we don't

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Haney - direct

1 think it's proper under 1006.

2 We don't think it's proper for an investigator to be
3 called just to read in or summarize transcripts from the case
4 if that's what's going to occur.

5 MS. LEWIS: Your Honor, the timeline that we have here
6 is merely just a demonstrative to aid in her testimony so it's
7 not confusing to the jury when she goes into various aspects of
8 the evidence which are all in discovery. There's nothing new
9 or unusual or surprising. It's merely admitted exhibits and
10 just the same way the government would put it on the screen, we
11 merely just have it in a chart to keep it organized for her and
12 the jury.

13 THE COURT: By tomorrow morning, you should confer to
14 figure out if there's some nature of the testimony that is
15 going to be a problem. But if she's done something that's
16 otherwise appropriate and she's going to use a timeline, that
17 is, you know --

18 MR. TURNER: It sounds like the testimony is going to
19 be about other testimony.

20 THE COURT: Let's put it this way: I assume everybody
21 knows that the testimony can't be simply a factual narrative of
22 the case or somebody getting up and summarizing what has
23 occurred and then drawing an inference from that, right, that
24 would usurp the province of the jury.

25 But if it's not that and it happens to be a timeline

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Haney - direct

1 of different dates and she's done an investigation and is able
2 to testify firsthand as to certain things and those dates are
3 useful, then that would be a different use.

4 MR. TURNER: It really doesn't appear that way, your
5 Honor, it's things like --

6 THE COURT: Let's take it as it comes, then. I don't
7 want to have a situation tomorrow though -- here is the
8 tension: I don't want to have a situation tomorrow where we
9 run into 8 million side bars and objectionable things and all
10 of that.

11 The witnesses -- we'll be clear. The witness can't
12 speculate. She can however talk about things that she knows
13 from firsthand knowledge. She's being offered as a percipient
14 witness. And if there is something, a timeline-type document
15 which aids that percipient testimony, she can use it, but she
16 can't summarize in some sort of summation sense.

17 But if you folks think you should give me a heads-up
18 on something --

19 MR. DRATEL: Here's what we'll do. My suggestion,
20 hearing the Court's instruction on that and direction, we'll go
21 back and look at the timeline and make sure that whatever we
22 put in meets the standards that the Court has laid out. We
23 will send that to the government as early as we can this
24 evening so that if there's an issue, then we can have it to the
25 Court in whatever form it is -- I don't mean whatever form it

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Haney - direct

1 is. It's in a form, but I mean whatever part that is in
2 contention by tonight. That would be the hope to do that.

3 The other thing that I have that I know I have with me
4 but I can't find the page right now among my papers is, I have
5 about a three-line character testimony jury charge. It's just
6 basic.

7 THE COURT: Get it to me in the morning.

8 MR. DRATEL: I'll get it to you tonight.

9 THE COURT: Now, on this witness, it sounds like this
10 is the kind of thing where I ought to receive a copy of
11 whatever the exhibits are, Mr. Dratel, that you end up giving
12 to the government so that I can look at them in advance and be
13 prepared for any additional positions that the parties may take
14 in this regard.

15 I mean, right now, I don't want to necessarily, since
16 she's being offered as a fact witness, delve too deeply into
17 all of her testimony, but I do want to make sure that she's not
18 going to be sort of just a narrative.

19 MR. DRATEL: No. The timeline is only a portion of
20 the testimony. There are other portions that are not related
21 to the timeline.

22 MR. TURNER: May I have a preview.

23 THE COURT: Why don't you show me the document. Let
24 me see. It may or may not be relevant if the document is going
25 to be changed.

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Haney - direct

1 MR. TURNER: Sure. Just this one as an example.

2 THE COURT: What you folks can do for this, you can
3 put a few words in and not all of the citations, which she
4 might find helpful, I don't know, in terms of tying herself
5 down to a particular time frame, but if she thinks it's
6 important that at a particular time in February of 2013 he had
7 a communication with Bates, a communication with Bates could be
8 the relevant event.

9 I don't know where this testimony is going,
10 Mr. Turner, but I'm hesitant to do anything until I find out
11 more about it.

12 MS. LEWIS: To be clear, I'm assuming we're moving the
13 citation to the government exhibits into the testimony that
14 relates to the information.

15 THE COURT: Let's just say what she cannot do, okay.
16 We'll be clear so that you folks understand and I am not trying
17 to be exclusive or exhaustive as to what she cannot do because
18 I don't know what she's going to do, so I can't focus this but
19 you can never in a jury trial have a witness who gets on the
20 stand and says I've reviewed all of the documents in the case,
21 I've spent hours on -- or whatever, 20 minutes, whatever the
22 length of time is -- on the evidence. Here is my findings. My
23 findings are the following: I've done an analysis and my
24 findings demonstrate that as of these four days, you know, X
25 couldn't possibly be the case because that's precisely what the

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Haney - direct

1 jury would do, which is take the evidence and draw inferences
2 from the evidence.

3 So she can't be providing a factual narrative. She
4 needs to have -- let's put it differently. She needs to have
5 done something or have -- she needs to either come to the table
6 with unique evidence that's firsthand like, you know, I, in
7 2013, ran into Mr. Ulbricht outside of his house and he
8 introduced himself to me as Ross, all right, which wouldn't be
9 in for the truth, it would be in for the fact that it was said.
10 That kind of firsthand knowledge is true, percipient knowledge,
11 you know, what she saw or heard, touched as a percipient
12 witness, not what she read and synthesizes as a convenient
13 narrator of facts, right. This comes up a lot when people want
14 to put on a witness who then sort of gives an overview of their
15 version of the story which you can't use one overview witness
16 for.

17 MR. TURNER: I think the key word is "firsthand."

18 THE COURT: She's being offered as a percipient
19 witness. I assume she has some firsthand knowledge.

20 MR. TURNER: If your Honor looks at the exhibit --

21 THE COURT: This may not be everything she's going to
22 say.

23 Is she going to have firsthand knowledge?

24 MS. LEWIS: She conducted an investigation.

25 MR. DRATEL: Some stuff.

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Haney - direct

1 MR. TURNER: Some stuff? For example, the document
2 before your Honor says Special Agent Der-Yeghiayan says who is
3 on first.

4 THE COURT: Let's forget the document and more
5 generally the issue is, does this witness have firsthand
6 knowledge about which she is competent under the rules to
7 testify?

8 If the answer is yes and it's probative of an issue, a
9 material issue in dispute, she can testify. The exhibits she
10 uses may have evidentiary issues, but she can testify to her
11 percipient knowledge.

12 MR. TURNER: My concern is we have no 3500, no
13 meaningful 3500 for this witness, no exhibits except for this
14 thing.

15 THE COURT: Right.

16 MR. TURNER: So there's absolutely no indication that
17 she has firsthand knowledge of the facts.

18 THE COURT: I'll get a proffer from you folks tomorrow
19 morning. I'm not going to make you do it tonight. She's a
20 fact witness, not an expert witness. So the disclosure
21 requirements are entirely different. So the fact that she
22 doesn't have 3500 material is not particularly remarkable for
23 many fact witnesses who are talked to extensively by law
24 enforcement necessarily.

25 Mr. Dratel and Ms. Lewis, you folks as trial lawyers

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Haney - direct

1 know what to do. As you know, I will hold you to the rules of
2 evidence so don't put us all in an awkward position where
3 you're trying to put somebody on who is going to be a narrative
4 speaker, okay?

5 (Continued on next page)

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1 MR. DRATEL: That's why I propose let us go back, look
2 at the document, try to make sure that we are not including
3 things in their testimony obviously that the Court has
4 indicated it would preclude.

5 But also I wanted, in terms of -- the firsthand
6 knowledge part is really a little bit of a red herring on the
7 part of the government's position because none of their
8 witnesses have firsthand knowledge. They put in something and
9 then they read it. So, it is not firsthand knowledge and the
10 government, historically -- not here, today, not in this
11 trial -- to a certain extent perhaps, but not really.

12 THE COURT: Well, let's talk about this trial.

13 MR. DRATEL: What I mean by that, and the Second
14 Circuit has permitted it, which is the concept of a summary
15 witness. We would not go beyond what is permitted on that and
16 we will ---

17 THE COURT: That sounds like, okay, so I am getting --
18 I think of that fellow sniff-sniff and I wonder was it sniffing
19 packets or sniffing packets and other things I know not, but it
20 has stuck with me. So, I am sniffing here that there may be a
21 bit of a summary issue which might bleed into narrative.

22 MR. DRATEL: No question.

23 THE COURT: Then let's head this off at the pass and
24 find out, send me the case cite that you think gives me the
25 parameters you are staying within.

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1 MR. DRATEL: Yes.

2 THE COURT: And why don't you, Mr. Turner, give me
3 your case cites on before, number one, whether this kind of
4 summary testimony is allowed, to what extent and where you
5 think it runs afoul of things. I will look at that all before
6 I walk in, we will start at 9:00, that will be our first order
7 of business, and if you folks have gone beyond what the rules
8 allow -- and I don't have in my mind apart from what I have
9 said whether or not there is a particular version that might be
10 allowed, I don't know of one but I hear your point, Mr. Dratel,
11 then I will, in terms of summary, then I will make whatever
12 rulings I need to make.

13 MR. DRATEL: Okay. That's fine.

14 THE COURT: For those three folks they are going to go
15 one, two, three.

16 MR. DRATEL: Yes.

17 THE COURT: Except for the Cincinnati person.

18 MR. DRATEL: Depending, obviously, when they arrive
19 but, yes, the intention would be that.

20 THE COURT: So, I am going to assume that Ms. Prince
21 has done some sort of investigation after the fact, sort of a
22 relatively contemporaneous investigation where she has gone out
23 and she has either looked at things and/or put things together
24 and wants to come in and testify either as to what she has
25 looked at or as to what she has put together.

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1 Now, you folks will give me whatever I need in the
2 sense of evaluating that kind of witness, generally, in terms
3 of substance and type, okay?

4 Now, Mr. Ulbricht, is he going to -- has he made a
5 decision as to whether he is going to testify?

6 (Defendant and counsel conferring)

7 THE DEFENDANT: I'm not going to testify, your Honor.

8 THE COURT: All right.

9 Now, if you change your mind between now and the end
10 of the case, let Mr. Dratel know and he can make an appropriate
11 application at that time. All right? I do understand that I
12 am asking you now before these other witnesses have testified
13 and if Ms. Prince's testimony gets constrained in some way that
14 you are not expecting then you should let Mr. Dratel know and
15 renew the application, make an application to be able to
16 testify, and I am very unlikely to preclude you, right? What I
17 want to know is I want to know for purposes of figuring out how
18 the trial is going to proceed. But, if you end up with a
19 burning desire to testify or just any desire to testify, you
20 will be allowed to do so. All right?

21 THE DEFENDANT: Okay.

22 THE COURT: I had one more thing on the jury
23 instructions.

24 On page 47, if you folks have it, if you don't -- this
25 is not extensive, I think you can probably just hear it. The

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1 word "adage, actions speak louder than words is applicable
2 here," I think "adage" is not as well known as it used to be
3 and I would use the word "phrase" in place of the word "adage."

4 Any opposition?

5 MR. DRATEL: No, your Honor.

6 MR. TURNER: No. I think that is a good idea.

7 THE COURT: Then, in the concluding remarks on page 91
8 where we are talking about what is being sent and not sent back
9 into the jury room, I think it is useful to strike, "and any
10 narcotics seized" because we haven't presented or handed
11 around, I don't think narcotics seized and put, "for instance,
12 the actual computer hard drives," which we are not intending on
13 sending back, as an example.

14 Any objection?

15 MR. TURNER: No, your Honor.

16 MR. DRATEL: No, your Honor.

17 THE COURT: The other one, which based upon my more
18 recent review of all these CCE cases -- and I think I may have
19 read every CCE case in this circuit at any level, and others --
20 is to change the last sentence at page 62 relating to
21 continuing series of violations to the following:

22 However, you must unanimously agree on which, if any,
23 three or more violations committed by the defendant constitute
24 a continuing series of narcotics violations in order to find
25 the defendant guilty on Count Four. They have to agree to

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1 unanimously not only that there were three but, as between
2 themselves, they must agree unanimously on which three.

3 MR. TURNER: That's fine, your Honor.

4 MR. DRATEL: Yes, Judge.

5 THE COURT: Those changes will be made and you will be
6 given a copy that will say "as delivered" which is my intent to
7 deliver it in that form.

8 In terms of the use of time tomorrow, we are now at
9 the point where let me ask you, Mr. Dratel, how long do you
10 expect these witnesses to go? Or Ms. Lewis?

11 MR. DRATEL: I think that given the nature of the way,
12 character of the witnesses that went today, I think we are
13 talking about less than an hour of direct.

14 THE COURT: For all three?

15 MR. DRATEL: Yes.

16 THE COURT: Combined?

17 MR. DRATEL: Yes.

18 THE COURT: So, why don't we, if that is the case, is
19 the government planning any rebuttal?

20 MR. TURNER: No, your Honor.

21 THE COURT: Then let's plan on closing tomorrow
22 afternoon.

23 MR. TURNER: Yes.

24 THE COURT: All right?

25 MR. DRATEL: Yes, your Honor.

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1 THE COURT: So, we will plan on closing tomorrow
2 afternoon. I would ask that if you folks have any
3 demonstratives that you even have any view -- I couldn't figure
4 out how to put the word sniff in there -- if you have any view
5 at all that there is any kind of issue as between you folks on
6 any demonstratives, please try to talk about it in advance and
7 raise it with me so we don't have any objections during the
8 closings, if at all possible. I would really like to avoid
9 that.

10 If you perceive, as you think about your closing and
11 what the other side is likely to do tonight, issues that might
12 come up where you know you are going to be upset because
13 they've been issues in the trial and believe would be
14 inappropriate, we should flag those before people start so we
15 know what the rules are so that people can try to avoid
16 objections, if possible.

17 Obviously you have to put an objection if you are
18 going to preserve something so they may well occur. I am not
19 suggesting you shouldn't, you have to preserve your record.
20 You understand.

21 MR. TURNER: Just for clarity, your Honor, regardless
22 of how long the direct goes we are going to plan to do the
23 summations at 2:00 tomorrow?

24 THE COURT: I think that if the direct does finish by
25 let's just say -- direct and cross finish by lunchtime, we will

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1 close starting at 2:00.

2 MR. TURNER: And if it finishes earlier than that?

3 THE COURT: If it finishes earlier why don't we decide
4 we will take until 2:00. Frankly, we have been starting every
5 day at 10:00, so say we go to 11:00, 11:30, take the hour and
6 45 minutes rather than having somebody start and hang over
7 lunch. We will just do them in a row.

8 Now, I say that but I'm not anticipating that the
9 total closings are going to be more than three hours with a
10 break. Give me a sense. Because if they are, then we would
11 start before lunch.

12 MR. DRATEL: Right. I would like to know what the
13 government projects as its opening summation.

14 THE COURT: Frankly, I'm not going to cut you off.
15 I'm not suggesting any particular time is not okay. I just
16 want to have a sense.

17 MR. TURNER: We don't plan on going beyond 90 minutes.

18 THE COURT: So an hour and a half. We should start,
19 then, earlier. We may want to start earlier, just in case.

20 MR. TURNER: I am saying that that is certainly our
21 limit.

22 THE COURT: So that would be 2:00 to 3:30, then if we
23 took a 15-minute break, and Mr. Dratel would go how long? Any
24 idea? It would depend on what they say.

25 MR. DRATEL: I really don't like going beyond an hour

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1 15. This is a complicated case, there may be some reading. At
2 the outside it would be an hour and a half but I don't like
3 going more than an hour, but this case may require it because
4 of the density. I would like to come in at an hour and 15.
5 That's my aspirational point.

6 THE COURT: An hour 15 would put us right at 5:00 and
7 we have rebuttal, so let's start them when we need to start
8 tomorrow because I would rather not have the rebuttal in the
9 morning, if we can avoid it.

10 MR. DRATEL: That, to me, would be --

11 THE COURT: You don't want that?

12 MR. DRATEL: That's the worst case scenario.

13 THE COURT: If we are going to run into issues and it
14 is going to be a 10-minute or 15-minute issue, we will see if
15 the jury tomorrow, for that purpose, can say so that we are
16 done as opposed to starting the next morning with the rebuttal
17 just before the instructions.

18 MR. DRATEL: Okay.

19 THE COURT: So this is sort of, I think, the
20 parameter. The summary of all of this is given the length, I
21 think we have to start as soon as we are done. We will take a
22 break and then we will start.

23 MR. TURNER: I guess if -- I mean, again, if we end by
24 let's say 11:30, perhaps we can start at 1:30 with summations,
25 or 1:00.

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1 THE COURT: We might be able to do that.

2 Why don't we do this: Why don't we see where we are
3 tomorrow. You folks will know much better this evening having
4 prepared yourselves how you are going to go, and we will pick
5 something that is going to work. Okay?

6 MR. TURNER: Thank you, your Honor.

7 MR. DRATEL: Thank you, your Honor.

8 THE COURT: One other thing.

9 You folks had the stipulation?

10 MR. DRATEL: Yes.

11 THE COURT: The amigo stipulation.

12 MR. DRATEL: The government has provided me a proposed
13 revision. What I was going to do is give them my emendations
14 right after court by sending it to them and then we will
15 negotiate. If we have an issue for the Court, you will get it
16 tonight. It won't be complicated.

17 THE COURT: Thank you.

18 MR. DRATEL: It will be a phrase here and a phrase
19 there.

20 THE COURT: Thank you.

21 And then I just wanted to say, I am taking my last
22 post-it off of my phone that there have been several rulings
23 that were subject to connection where the connection has been
24 made. We talked about one earlier that was related to the
25 server but there were a couple of others that, as they went

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1 through the connections were made so all the
2 subject-to-connection rulings are now complete.

3 We will pick up tomorrow morning at 9:00. Thank you.
4 Send me, please, whatever we need on this Ms. Prince
5 issue.

6 (Adjourned to 9:00 a.m., February 3, 2015.)
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GOVERNMENT EXHIBITS

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8051909

920B1910

9611912

9501917

9401922

940A1932

940B1934

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940E1937

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